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MARITIME

INTERNATIONAL LAW

BY

JOHN A. DAHLGREN,

LATE REAR ADMIRAL, U. S. NAVY.

EDITED BY

CHARLES COWLEY,

Of the Massachusetts Bar,

Formerly Judge-Advocate on the Staff of the Author.

BOSTON:
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PREFATORY.

"It is not easy to rate too highly the value of the study of International Law, whether looked npon as a supplement to other legal and historical studies, or as a substantive study having its end in itself." Such is the remark with which Professor Amos introduces his learned and valuable Lectures on International Law; and it sufficiently indicates the purpose of the work which—on this twelfth anniversary of the occupation of Charleston—is respectfully presented to the noble profession which its author so well, so peculiarly adorned.

THE EDITOR.

53 State St., Boston, Feb. 18, 1877.

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BIOGRAPHICAL SKETCH OF THE AUTHOR.

BY HIS WIDOW,

MADELEINE VINTON DAHLGREN.

Prefacing a short sketch of some of the events in the life of the late Rear Admiral Dahlgren, we desire to make some explanatory remarks, regarding the present work, which was the last effort of his gifted pen.

These notes on International Maritime Law, were hastily thrown together, while the Admiral was in command of the South Pacific Squadron, and during a rather prolonged stay off Callao, Peru. Consequently, the Admiral had no access to any works of reference, other than those comprising the very limited law library allowed a United States Flag Ship.

This almost absolute want of material brought his labors rather summarily to a close, whilst still detained in the South Pacific. He had, however, intended to elaborate and complete this treatise, on his return to the United States.

But the labors of a life so fully given with a single eye to the interests of his beloved country, were

fast drawing to a close. He did not long survive the return home. The short interval of time that remained to him, was unfortunately too fully occupied with the official duties assigned to him, to admit of literary effort.

These notes were consequently left in a rather incomplete state; yet, enough was given to indicate the general plan of a more extended work, and to show its importance and necesity.

At this conjuncture, Judge Charles Cowley, who served so ably during the late war as Judge-Advocate of the South Atlantic Blockading Squadron, under Admiral Dahlgren, and to whom the questions herein treated are quite familiar, has kindly undertaken to edit the work.

He has been impelled to do so, recognizing the utility of the aims of the author, and likewise influenced by his love for the memory of his old commander.

The Admiral, in some introductory remarks, gives, as a reason for attempting such a compilation, his desire to fill a need of the navy.

We earnestly hope on our part, that although the Admiral was never permitted to see the fruition of this laudable desire, yet that the final attainment may not fall short of his expectation.

We trust that this treatise may, at least in a measure, do the good it was intended to effect

Rear Admiral John A. Dahlgren was born in the city of Philadelphia, Nov. 13th 1809. His father, Mr. Bernard Ulric Dahlgren, was one of the most respectable merchants of that commercial emporium, and held the post of Consul for Sweden up to the time of his death. He possessed a fine and highly cultivated intellect, and spared neither pains nor expense in the education of his children. Unfortunately for his family, he died in 1824, before this son, his eldest child, had attained manhood.

The lad, thus left solely dependent on his own exertions, was after some effort favored with an appointment in the Navy. This had been the great object of the boy's ambition. The probation as a midshipman

lasted six years, most of which time was spent at sea. His first cruise was made in the *Macedonian*, then commanded by Commodore Biddle.

In 1832, Midshipman Dahlgren passed his examination, and owing to his mathematical proficiency, was soon detailed for duty on the Coast Survey, then in charge of Mr. Hassler, a very eminent astronomer.

Becoming deeply interested in this new pursuit, Mr. Dahlgren followed it with more zeal than care for himself; and as a consequence, his uncommonly fine sight at last yielded to the effects of incessant labor, so that in 1837 entire rest was required in order to prevent absolute loss of vision.

Deriving no benefit from medical advice at home, Lieutenant Dahlgren (for he had now been promoted) repaired to Paris in 1837, and placed himself under the care of Dr. Sichel, the distinguished occulist, The injury was however too deep-seated for rapid cure, and several years elapsed before he recovered.

For two years of this period Lieutenant Dahlgren resided on a little farm, as advised by Sichel, and here was born his gallant son, the late Colonel Ulric Dahlgren.

In 1840, Lieutenant Dahlgren resumed duty, and in 1843 went to the Mediterranean in the frigate *Cumberland* which returned to the United States late in the year 1845, the cruise having been shortened by the prospect of a war with Mexico. When the war began with Mexico, Lieutenant Dahlgren was assigned to ordnance duty at Washington, although he preferred active duty at sea, and had made effort to obtain it. Then commenced those labors as an ordnance officer, which for sixteen years demanded all his energy, and finally placed Mr. Dahlgren in control of this branch of the naval service as chief of ordnance. At first, he received little notice and no countenance from the ordnance authorities; but earnest and patient attention to duty, aided by the indications of genius for ordnance which he at once gave, soon obtained confidence.

At this time there was no ordnance establishment in the yard, except perhaps a small pyrotechnic laboratory in charge of Mr. Coston, and the new incumbent set to work with no appliances around him.

At that time gunnery included nothing but the use of solid shot, and its simple accessories. The French General Paixhans had explained his system of shells; but the cannon which he suggested, fettered it to the part of an auxiliary, and it played no higher role in naval armament. Lieutenant Dahlgren was not slow in discerning this defect, and soon offered the remedy in the style of cannon known by his name, and which for so many years have constituted the naval armament of the United States.

These guns are the result of invention, not of experiment, and those last made are precisely similar to the first one. The Dahlgren gun has uniformly stood every test of experiment and of battle, and has been used with entire confidence by the navy.

> "And many a time in many a clime
> His captain's-ear has heard them boom,
> Bellowing victory, bellowing doom."*

Under his sole direction and management the Naval Ordnance Department at Washington then acquired the additions and extensions of its present condition; the foundry for cannon; the mechanical department, where they are finished; the gun carriage shops; the experimental battery; equipments of all kinds, etc. etc.

In order to introduce these innovations into practice and to remove objections, particularly to the XI.-inch gun which was then considered too heavy for use at sea, Commander Dahlgren was allowed to equip the Sloop-of-War *Plymouth* entirely as he wished, and in 1857 he took to sea. In this cruise he visited the European coast from Portugal to Holland. In 1858, he cruised in the West Indies, and afterwards resumed command of the Ordnance Department.

*TENNYSON'S, *Ode on Wellington.*

During this cruise and when off Tampico, he was called upon by the United States Consul to vindicate the rights of American citizens, whose goods as merchants had heen subjected to illegal seizure and enforced taxation by the local Governor, General de la Garza. The limited space assigned to this sketch does not permit an extended notice of the steps then taken by Commander Dahlgren to enforce justice toward American citizens commercially domiciled abroad. The correspondence that ensued showed that he was well versed in questions of international law, and ready to insist on their just application. The very able letters then written by him and addressed to General de la Garza, to the Mexican Minister for Foreign Affairs Senor Ocampo, and to the President Senor Juarez, form of themselves a most interesting chapter on the subject of forced loans, illegal seizures and similar exactions when made upon foreign merchants. The excellence of his logic, backed by a firm determination to protect the invaded rights of American citizens, had the desired effect, and due apology and reparation were made. A letter ftom the United States Consul on this subject, addressed to Commander Dahlgren, says: "You have done more for the commerce of this place than all the ships and squadrons belonging to the United States have done since I have had charge of this consulate." This letter lies before us as we write. dated "Tampico, Nov 11th, 1858," and signed, "Franklin Chase."

In the spring of 1861 when the Rebellion broke out Mr. Dahlgren was still a commander and in charge of the ordnance department at the Washington Navy Yard.

Virginia and other states joined the malcontents. The capital of Maryland refused way to the troops of the loyal States; and at this moment, without the least premonition, the Commander of the Yard and all its officers resigned and joined the insurrection.

Commander Dahlgren alone remained, and upon him the Government devolved the charge of the Yard, important not only for its naval resources, but as the key of

the defences of Washington on the left. Commander Dahlgren hastened to secure the only route left to the Capital which was by the Potomac River.

When Alexandria was seized, Commander Dahlgren moved down the left wing of the column under Colonel Ellsworth and the corpse of this brave officer was brought back by him when he returned on that day.

In July, 1861, Mr. Dahlgren became Captain by the ordinary course of advancement, and still remained in command of the Washington Navy Yard, participating as far as his opportunities permitted in the active operations about the Capital, which by the vicissitudes of war was menaced in every direction by turns. In July, 1862, at the wish of the Navy Department, he became Chief of the Bureau of Ordnance, and in February, 1863, was made a Rear Admiral in the Navy.

In July, 1863, he succeded to the command of the Squadron blockading the South Atlantic ports of the seceding States. Many existing circumstances might well have deterred one less earnest in the performance of duty, from accepting a position involving so difficult a task.

Public expectation made the most exorbitant demands with regard to the capture of Charleston; and the previous failure of two attempts to reduce this place had deepened the public feeling, although the high reputation of Admiral Dupont had been enhanced by his brilliant capture of Port Royal.

The advocates of the different styles of Iron Clads were also in the arena, and new questions were to be settled in their regard.

To blockade a coast of three hundred miles including twenty-five ports was of itself a work of magnitude. It may readily be seen that exercising such a command during a prolonged period of time, the most important questions of international maritime law constantly required investigation, and a cautious course had to be taken, based upon an attentive study of precedent and authority where such existed, as well as one adapted

to the novel and trying situation which he was called upon to fill

The decision which foreign powers had hastened to make in our regard, and to our great detriment, and especially the "Neutrality Proclamation" of Great Britain, which placed upon the equal footing of belligerents the hostile parties north and south, made the duties of a blockading squadron both complicated and rigorous. To keep a vigilant watch over the blockaded coast, to protect our rights of blockade as far as could be, to deal with cases of seizure, required an intelligent appreciation and discrimination. Such was the painful school which prepared Admiral Dahlgren to expound for the United States Navy, the precepts of the code of nations.

And out of the dire necessities of his position came his conviction that such a work as this which he afterwards commenced to prepare, was needed to meet the exigencies of our naval commanders.

It is not within the scope of our present purpose to give an historical outline of the military operations of his command off Charleston, but rather to direct attention to those points connected with the blockade instituted, and the questions of maritime international law arising therefrom.

It may readily be understood from the partial view of the situation we have endeavored to give, in this connection, that Admiral Dahlgren had earned the right to be considered as among the historical authorities regarding the law of blockade; since "the law of nations is only a species of common law code, expounded by the general consent *and practice* of the great civilized nations," and as such has varied from time to time according to the interests or necessities that have arisen.

Thus all historical action in that direction must in its turn become precedent, and tend to sustain the common adoption of certain principles thus defined.

A command which numbered eighty and even over ninety vessels of war, might well be supposed to bring care

sufficient for one man; but private griefs were added even to these; for in 1864 the Admiral lost his second son, Colonel Ulric Dahlgren, United States Cavalry, who fell at the head of his men during an expedition intended to rescue the Union prisoners at Richmond.

All the circumstances attending the death of this heroic son of bright promise, were of a peculiar bitterness and inflicted deep wounds in the heart of the patriot father never to be healed in life.

The history of the naval operations off Charleston has yet to be written, and whenever this shall be done, with all the adjuncts of original documents, military telegrams, and that light which the present casts upon the past, it will be better understood by the nation that the course then taken was the only one possible.

It had the approval of the Navy Department, and toward the close of the war in December 1864, when General Sherman advanced from Atlanta and established communications with Admiral Dahlgren at Ossabaw Sound, the events which rapidly succeded this co-operation of Army and Navy, speedily led to the fall of Charleston.

There was a united outcry at the time, of "On to Richmond," "In to Charleston," which never comprehended or appreciated the true military situation. But General Sherman, with his keen military perspicacity and the clear-sightedness of genius, met the exact points regarding the capture of Charleston by assault, when at the close of the war he wrote to Admiral Dahlgren: "I now thank you in person for not having made the hazardous experiment; for when the time did come to act seriously, your fleet was perfect, well manned and admirably suited to aid me in the execution of the plan which did accomplish the fall of Charleston, and more too."

On July 12th 1865, the war having ended some months previously, Admiral Dahlgren finally gave up the command which he had so long held, during which he had enforced one of the most difficult and prolonged blockades known to history, with the utmost vigor and the most careful exactitude.

This lengthened and arduous service, which indeed laid the seeds of the disease that at no distant day terminated his distinguished career, was happily succeeded by the first interval of peaceful repose he had known in many years. Entire inaction was however never *rest* for his active mind, and during that year he compiled and prepared with great care the historical notes of the memoir of his son, Ulric, which were after his death revised, completed and published by his widow.

Dec. 1st, 1866, he sailed from New York in order to take command of the South Pacific Squadron.

During the course of this command he was again called upon to meet some points of international law. Peru had made Admiral Tucker, (formerly of the United States Navy, but who had left the service and gone over to the Confederates during the war) the admiral-in-chief of her little navy. Admiral Dahlgren refused to him the ceremonial salute usual to the rank in the Peruvian Navy, on certain grounds. The points he took, and in which he was supported by the Navy Department, which authorized him to waive the ceremonial due the rank, were mainly these: Tucker was an officer in the Navy, left, and entered the rebel navy. These forces were vanquished, when certain terms were voluntarily granted releasing them from penalty and allowing them the privilege of trial. May 29th, 1865, the President by Proclamation absolved the whole Southern people from all liabilities except certain classes of persons specified. Among these, was the class to which Tucker belonged. Therefore he stood liable to trial, and could not be relieved therefrom, save by pardon of the President.

The act of Peru making Tucker her officer, did not relieve him, for he could not in his position thus expatriate himself and take a new allegiance. Hence the United States and its citizens could only know Tucker as an ex-officer of its Navy, liable to, and still owing the old allegiance. No officer of the United States was authorized in any way to acknowledge otherwise, even by the mere ceremony assigned to his rank in the Peruvian Navy. Such

were the grounds taken, and they were virtually admitted by the goverment of Peru, and Tucker accordingly resigned his position. We may add that personally Admiral Dahlgren entertained no unkind feelings whatever towards this officer but based his action entirely on abstract principles of law, as applied to this case.

The matter of asylum to Refugees also had to be met on several occasions; notably the case of Senor Prado President of Peru, who being displaced by a revolution and in danger from the mob, entered the United States Legation asking asylum. It being apprehended that the mob would take Prado out of the Legation, he came alongside the Nyack at night in a boat and asked asylum. His reception was authorized and he was at his own request taken to Chili.

We find, among the notes left by Admiral Dahlgren, another case mentioned, which seems to have been decided differently; upon what grounds we will leave the Admiral to speak for himself. "Mr. Francis Morales, Chief Paymaster, Peruvian Navy, came on board the Fredonia for asylum; states that he was seized and deported to Chili, (Oct. 10, 1866) with twenty other persons, generals and chiefs of the army. Being taken sick and his life in danger, he seeks the air of his native climate."

The Admiral continues: "On this point, it seems to me that a foreign ship of war enters port on conditions implied of not interfering in its own proper affairs. That by her violating these conditions the Government has the right to exclude the ship.

The custom has been otherwise, but perhaps only permitted from the weakness of the Government involved. TheUnited States has claimed to follow the opposite practice."

Here various cases are cited in proof. The Admiral adds. "No one can doubt what would occur if any foreign ship of war in a United States port undertook to admit on board and protect fugitives from our laws of any kind.

Wherefore I think that a United States ship has no like right in a foreign port. At the same time, there is

no obligation to deliver up the fugitive, only not to harbor him. He must depart freely as he arrived."

In July 1868, Admiral Dahlgren was recalled home, having been confirmed by the Senate as Chief of the Bureau of Naval Ordnance. In the Summer of 1869 he was at his own request relieved from this duty, and appointed Commandant at the Washington Navy Yard. At this place on July 12th, 1870, without any previous illness. he died suddenly of a disease of the heart, in the sixtieth year of his age.

Having received by a vote of thanks asked for in his behalf by President Lincoln, from Congress, ten years additional on the active list, he had at the time of his death the pleasing prospect of a long term of active usefulness still before him. His thoughts were solely occupied with plans and projects for the good of the navy: and had it pleased God to prolong his useful and eminent career, he had hoped not only to have entirely completed this little work, but also to have fully perfected and brought to the test of experiment, various ordnance theories and other ideas by which he sought to benefit his country.

It was his firm intention to have written a full history of the South Atlantic Blockading Squadron so long held under his command. It is deeply to be regretted for the truth of history, that this could not have been done by him, as up to the present time, the brave, sustained, and determined action of the navy before Charleston during the war, has never been properly appreciated, or indeed at all understood, by the country at large. But it is a consolation to the patriotic heart to know that although the verdict of history may not be at once given, yet that "the record" has been made and will surely at some time clearly appear.

It is not here our purpose to give even a condensed idea of the large and varied experience and action of Admiral Dahlgren, but rather in connection with this faint outline, to indicate how and why he was so well fitted to discuss questions of international maritime law, and to have his opinions receive respectful attention.

Admiral Dahlgren made a brilliant record as a writer of scientific works on ordnance questions. His books have long been used as text books by the Navy, and his ideas repeated in other works on ordnance, with various modifications. It was his genius that revolutionized the whole system of American Naval Ordnance and this system in turn displaced wooden ships for iron-clads.

We subjoin a list of various of his works.

1848, Dec. 32 pdr. practice for ranges. Printed 1850.

1852, Boat Armament, 1st edition.

1853, Percussion System. There also appeared in

1855, A French Translation of Boat Armament. Also of Shot-Shell Practice.

1856, Boat Armament, 2nd edition.

1856, Shells and Shell Guns.

Besides these works, numerous ordnance reports, reports on Monitors and armored vessels, on the coast defences, etc, were published.

In 186I, His Drill of IX and XI-inch Guns was printed. The "General Orders" he issued from 1863 to 1865 form a volume of themselves.

To few men has it been given, to realize during their lives the practical results and benefits arising fron their inventions and the acceptance of their books and theories. Admiral Dahlgren was so fortunate as to live to witness the realization of many of his theories and ideas.

He never had any selfish aims, or other aspirations than those connected with his country's good. Nor did any pecuniary advantage, such as England and other countries bestow in similar cases, ever accrue to him during his life from the inventions and the splendid system of naval ordnance which he gave to the nation. He died as he had lived as to money matters—a poor man. Nor let it be forgotten that this crowning virtue was due to his exalted patriotism.

THE LAW OF BLOCKADE.

THE LAW OF BLOCKADE.

Having been under the necessity, as the commander of a blockading force during the Rebellion, to make myself acquainted with the practice of blockade, the notes collected from various authorities swelled at last to some bulk. It occurred to me that a publication of them might save some of my brother officers the trouble which it gave me to acquire this information, scattered through many volumes, and intermixed with other subjects of international law.

I have no idea of setting up as an authority on the subjects treated of, or of originating any novelties in regard to them, but merely to place at the disposal of naval officers a practical summary of the points involved in directing a blockade, which may assist them in avoiding any material departure from the leading principles that it is requisite to pursue. These will be found in the well-known authorities of the day.

Until recently, our Navy has had nothing to guide it save the theory of well-known writers, and the practice of European nations. But during the Rebellion, it became necessary for our own Government

and our Admiralty Courts to decide on the principles which they would follow in enforcing the most extensive, longest continued and effectual blockade that is recorded in history. In the portion assigned me alone, a stretch of three hundred miles including twenty-one ports, was closely blockaded for two years, the force at my disposal varying from seventy to one hundred vessels, three fourths of which were steamers —from the heavy ironclad frigate to the fleet cruiser— and by means of the Monitors the blockade was enforced to the very forts that defended the harbors.

The proclamations of the Government and decisions of our Prize Courts now define the positions held by the United States, in relation to blockades, and which they will concede to other flags. In some respects they differ from the doctrines of the text writers; but in reality, very little from the usage of other maritime powers.

What is written on the subject is incorporated as a mere incident in the great questions of International Law, and generally with less ability. Not being nautical men (except Ortolan) they slur points which in practice are important. Now I propose to separate them and to form a manual for naval officers.

BLOCKADE DEFINED.

I. Blockade is an incident of war, whether carried on between two nations or by a legal Government to suppress Rebellion. In our own it was resorted to when, in many cases, a closing of the ports would have served; but, as in other cases, the British Government constrained our necessities. It was understood that it would only admit the right to close, when the Government closing held the port. In this, as in

other cases, they set up precedents which will operate against themselves, and which we will insist on.

A pacific blockade may be convenient but it involves absurdities. Such was that of the French and English against the Argentine Republic, and that of France against Mexico. The absurdity of a pacific blockade was shown in a decision of a Prize Court, refusing to condemn as prize, because war did not exist.

II. Blockade, to be acknowledged, must be effective. This is not only the avowed doctrine now of England, France, Russia, Austria and Prussia, but it has always been the United States doctrine, established by treaty with foreign nations. This has not always been the case, particularly with England, Holland, etc. Some nations assign a fixed force to make a blockade effective, as Denmark; but the general view is expressed otherwise.

III. How neutrals are informed of a blockade. Differences of opinion exist among jurists, and nations. The practice of the United States is to make Proclamation of the fact. Notification is also made by endorsement in the early stages of a blockade. But Prize Courts decide that this is not necessary, though allowed by Proclamation.

IV. Some of the incidents of blockade, *droit de suite*, etc., are violently opposed by Hautefeuille.

V. Exclusion of National vessels has been discussed but not established; nor claimed save by France.

VI. Great uncertainty exists in this department of International Law. It varies with different nations, and in different epochs of the same nations.

Doctrine and practice differ. Belligerent and Neutral rights are espoused as interest sways. Nations sustain the principles of their situation. The United States are a great Neutral as regards Europe, but may be a great Belligerent as regards America, and may have to change their doctrine.

HAUTEFEUILLE.

In examining the leading text writers I come first to Hautefeuille. In the second volume of his "Divine Law," he gives a whimsical definition of Blockade. It is simply an act of war, a right to injure one's enemy. In a few cases the number of vessels needed to make an effective blockade is fixed by treaty. In 1742, by the treaty between France and Denmark, two ships are required. Holland and Sicily, by the treaty of 1753, require six. This is wholly impracticable It must depend on circumstances. The Armed Neutrality of 1780, defined "evident danger in entering" to be the test of an effective blockade. This was signed by Russia, Denmark, Sweden, Prussia, Austria, Holland, Portugal, Italy, and recognized by France, Spain and the United States. England alone refused to join, until 1856, when she signed the Treaty of Paris. Hautefeuille cites the treaty between the United States and Sweden, in 1816, as the first (art. 13) which *signale ce progres;* regrets that the Treaty of Paris is not as explicit as it should be, especially as to Paper Blockade. Neutral vessels are confiscated which are met at sea, *bound to*, or *sailed from* a port thus blockaded. Calls the former *droit de prevention*, and the latter *droit de suite.* England resorts to Paper Blockade, but suspended it in 1854, when allied with France and at war with Russia. France never used Paper Blockade save in

1806-1807 in reprisal, but ordered *prevention et suite*, except for the last half century. Holland and Spain have renounced Paper Blockade since the decline of their maritime power. Grotius, Vattel and other writers who sustain *real* blockade, admit the Paper Blockade.

A Belligerent has the right to blockade the ports, bays, rivers, and coasts of an enemy. This is seemingly denied by the Berlin decree of 1806, which is limited to ports of war and fortified places. Some affirm that a blockade must contemplate reduction. This is an error. The general purpose is to cut off foreign commerce.

Hautefeuille has peculiar views of notification. Blockade, in his view, begins with the fact, and is made known to neutrals as they offer to enter. It ends with the fact, no matter what may cause the absence of the blockading fleet. (Here he is at variance with the best authorities.) A blockading force has the right to seize, sink or burn a vessel violating the blockade. Vessels in a port before a blockade can depart at pleasure with what is on board, but cannot complete their cargo. (United States treaties permit this.) French treaties permit a vessel to leave with cargo after bockade. The law of blockade extends to vessels of war; though this is not enjoined by any treaty. The French ordered it in their blockade of Mexico and the Argentine Republic.

Diplomatic notification of a blockade is the usage of civilized nations. It is only admissible when the fact exists. Of itself it has no value, and determines neither the beginning nor the end of a blockade. Diplomatic notification then is not blockade; it is not even essential. Blockade may exist without it; but

it is useful to save harm to neutrals; prevents their vessels from going to blockaded ports which they cannot enter, and thus saves loss of time. The diplomatic notification not being essential to blockade, it is not obligatory on the belligerent. But it is the European custom. In 1854 all the French and English blockades were carefully notified. The notice is only declarative of a fact and ceases with the fact.

Admirals using the power given them, blockade distant places, so that diplomatic notification is impossible or only after some time. This is called *Blockade in fact.* "Thus the blockade may not exist, notwithstanding the diplomatic notification, and may exist without it." Neutrals have the right to ascertain personally if the blockade, though notified, has not ceased. "So, whether the neutral is ignorant of the actual blockade or wishes to be assured of its existence, he may repair to the spot without violating any obligation." The blockader then declares the blockade, by an officer of one of his vessels, to each vessel attempting to enter. Hautefeuille thinks special notice an essential of blockade, and that we cannot expect independent people to consent to exclusion by an act, without being able to verify its existence.

"Treaties are yet few which mention this question, and consider the special notification obligatory." France is of this opinion. M. Mole's Note on Blockade, when Minister of Foreign Affairs in 1838, is clear enough on the point. (This note sustains the exclusion of vessels of war—a doctrine quite as peculiar as that of the necessity of special notification.) Hautefeuille affirms that special notification is neces-

sary in all cases, and even when the diplomatic notification has been received by a vessel before sailing. France is particular in this respect; but Hautefeuille admits that in the war of 1854, France gave only diplomatic notification, and not special; which he attributes to her alliance with Great Britain. Neutrals cannot take cargoes into port after a blockade is established.

Hautefeuille admits but two violations of blockade: the attempt to pass an effective blockade after *"special notification,"* and the attempt to pass out by a vessel with a cargo taken in after blockade. He holds it no violation of blockade for a vessel to enter, after special notification, on finding that the blockading fleet has been driven off by heavy weather; but admits that it is a violation of blockade for a neutral to pass the blockade or attempt it without stopping, regardless of signals or fire of guns. Singular as this sounds, Hautefeuille says, "This is very uncommon, but may happen." (It was the invariable course on our coast.) Confiscation of vessel and cargo is the punishment of violation of blockade. A vessel violating can only be seized in three instances:—At the time of violating the blockade, entering; in the port, of the belligerent, after entrance; and at the time of leaving.

The belligerent invents the right of *prevention* and of *pursuit*. The "*droit de prevention*" is the right to capture any vessel, which, knowing of the declared blockade of a port, sails for it, or learning it after departure, perseveres. It was devised to make fictitious blockade effective; it first appeared in the Dutch Edict of 1630; and was first applied in the fictitious blockade of French coasts by the English and Dutch in

1689. This principle has been generally adopted even by France, to sustain real blockades.

Diplomatic notification was advocated by Aibyenca, Bynkershoek, Wheaton, Ortolan, and particularly by Sir W. Scott, in the war, 1803 to 1814. But Hautefeuille condemns it. All foreign nations, except England, have for some years returned to true principles, effective blockade, special notification in treaties, etc. "*Droit de suite*," he thinks, is no better founded. Neutral vessels escaping from a port declared blockaded, violate the blockade and are liable during the whole time of the return voyage, as far as the port of destination. He condemns it. It first also appeared in the edict of 1630, was adopted afterwards by nearly all, and applied to effective blockades. He censures its advocates—Bynkershoek, Wheaton, Ortolan, Scott, etc.

"Fictitious Blockade" originated in 1584, with the Dutch, then at war with Spain, for independence. They declared blockaded all the ports of Flanders held by the Spaniards. It was renewed often, especially in 1630, but was never carried into execution. So in 1652 and 1666, by Holland against England, and against France in 1672--1673. Spain followed by way of reprisal, and in 1663 declared blockaded all the ports of Portugal. Other powers refused recognition. Holland protested. England always used "paper blockades;" in 1756 against the whole coast of France, seized a number of neutrals, especially Dutch, who protested stoutly but to no purpose. England was restrained in the American War of Independence by the Armed Neutrality; but extended the practice fully in the war of the French Revolution. She declared a blockade of all the coast

from the Elbe to Brest, and then to all the French coasts and colonies, and to people in alliance. France retorted by a Paper blockade of the British Islands and all British possessions.

Paper blockade is a mere declaration of blockade without sending ships, and then no neutral can send a vessel to the ports blockaded. This measure begins and ends by notice. It is useless without the "*droits de prevention et suite*," but with them it is terrible. (In discussing the English definition of a Paper blockade in his note, Hautefeuille says, "Notice and no act," but Sir William Scott says, "Notice accompanied *by the fact*," a wide difference and damaging to the argument of Hautefeuille.) Paper blockades are annulled by the Treaty of Paris, 1856.

"Blockade by Cruisers" Hautefeuille defines to be the act of one or more vessels of war or "armateurs to cruise in certain parts of more or less extent to capture hostile vessels, and prevent neutrals to convey to the enemy contraband of war." It may be effected by few and small vessels, but is not admissible and should not be allowed. He regrets that the Treaty of Paris was not more explicit on the subject of Paper blockades, which he thinks England will renew when convenient. The remedy is by a combination of Neutrals as in 1780.

Hautefeuille considers the case of neutral vessels in belligerent ports when bombarded. Being there lawfully, they are damaged or destroyed. He holds the attacking party not responsible. The attack is not bound to give notice to Consuls and others, in order to secure persons and property of their flags, but may attack at pleasure. Notice to them is a notice to the enemy. Foreign Representatives have no

right to protest against the operations of a belligerent against the town where they are. In 1848 the consuls of France and England at Trieste did so to prevent the Italian fleet from attacking that place, but this cannot be justified. Neutral vessels found in a port captured, are free unless they have violated the blockade, or their neutrality.

"Blockades in peace" have been practiced by France, England and Russia for some years past. The first instance was in 1827, when the Grecian coasts were blockaded to terminate the Turkish oppressions. It ended with the battle of Navarino. France used it against Mexico, and ended by taking San Juan d'Ulloa. In 1838, England and France used it against the Argentine Republic, and continued it for ten years. It was notified diplomatically, and by France specially. These are a violation of neutral rights. "*Peu de publicistes se sont specialment occupes du blocus.*" No neutral recognized the new system of pacific blockade; and if he had, it would not have justified it. The English and French differed in regard to prizes.

ORTOLAN.

The second of the leading text writers, whose works I have examined, is Ortolan. He says, the most efficacious means, and most prompt, for terminating maritime war, is the destruction of an enemy's commerce. It is based on undoubted right, and is arrived at by a single blow by interdicting the entrance and departure of all vessels from the coasts and harbors, which is done by blockade. It is a violation of neutrality to introduce supplies into a place blockaded. He likens maritime blockade to regular

seige by land. Vessels of war are excluded as well as ships of trade, though often exempted, as they were by the United States in the war of the Rebellion. The purpose of blockade is attained by excluding merchant vessels. Blockade is only obligatory when effective. It was defined by the Armed Neutrality of 1780, "evident danger in entering," and the same in the Armed Neutrality of 1800. Any port, etc., may be blockaded. The Berlin decree of 1806 limits it to fortified places. A neutral violating blockade is treated as an enemy. Blockade must be made known officially. A vessel ignorant of the existence of a blockade is not guilty of violating it. It should be notified by diplomatic notice, which does not however give it validity. A neutral may, after diplomatic notice, sail for a place, hoping to find the blockade raised, which is not a violation of blockade. The English affirm that after diplomatic notification no notice is needed from a blockading force. He cites Sir William Scott's explanation, "After diplomatic notification, sailing for a place blockaded is a violation." The English doctrine is not admitted by France; a neutral should be warned off. This was practiced in the blockade of the Argentine and Mexican ports. Ortolan thinks all maritime powers will some day admit a rule by which neutrals cannot be made prizes, unless first warned off, besides having diplomatic notice; which is the United States practice. He cites President Lincoln's Proclamation and our Treaties, but is mistaken in both. He does not fail to note, however, the real point of the latter, and augurs abuse. Paper blockade is diplomatic notification not accompanied by sufficient force to blockade. It is used by Great Britain, which, however,

will not admit the principle. Temporary absence by a blockading fleet, from stress of weather, does not end the blockade, but a vessel entering then does not violate the blockade. Sir William Scott gives to diplomatic notification an effect independent of sufficient force. If a blockade is suspended by superior force, it ceases, and must be re-commenced; even Scott admits this. According to Vattel, a neutral is an enemy who knowingly attempts to violate blockade. A vessel having individual notification attempting to enter, is evidently liable for violation. Ortolan mentions the case of two armed vessels seized in 1839 by a French blockading fleets, near La Piata, and released. The English Admiralty Court condemns vessels found near a blockaded port without intention to enter. A vessel in, may leave with cargo taken in before blockade. A violation of blockade makes one liable for all the voyage. This usage goes as far back as 1630. Imaginary blockades were practiced by England and Holland against France in 1689; by England in 1756 and in 1793. The greatest abuse of this kind were the British orders in council, in 1806, met by the famous Berlin and Milan decrees of Napoleon.

LAWRENCE'S WHEATON.

It was a favorite notion of Napoleon that blockade should be limited to military ports; and this is the doctrine of his Berlin decree of 1806. Mr. Cass, Secretary of State, advocated this doctrine during the Italian War of 1859. John Marshall, Secretary of State in 1800, held the same doctrine. Mr. Cobden, who calls the United States the Great Neutral, held the same doctrine. He says we always suffered from wars in Europe, and were therefore strong advocates,

of neutral rights. Mr. Cobden, for the sake of giving cotton to England, opposed our commercial blockade in 1861–'65. He says England is now "the great neutral power of the world," and therefore should "shape her policy according to the light of modern events." (How is it with the United States in this "light?" How curiously would the doctrines of Mr. Cass and Mr. Marshall have sounded in our ears during the War of the Rebellion!)

A lawful blockade is not affected by the temporary absence of force, caused by storm. Proclamation or notification alone is not sufficient. The blockade must exist, and must be brought to the knowledge of the neutral party. Notification on the spot is sufficient. Public declaration is sufficient in certain cases. Distant parties have the right to send to the port to ascertain whether a blockade exists. Wheaton gives the English definition and the American treaty provisions of blockade with England, which he considers a correct exposition of International Law. To constitute a breach of blockade there must be an attempt to enter. (Here Wheaton is wrong, and his view is at variance with the English decisions and with our own decisions.) A blockade is raised when it is suspended by a superior force of the enemy. No breach of blockade is committed without some act of violation. Where a neutral vessel is found near a blockaded port, her mere presence raises a strong presumption of her intent to enter. A neutral coming out of a blockaded port cannot take on board a cargo after the blockade begins.

In Mr. Lawrence's note, on page 827, the definition of blockade given by the Armed Neutrality in 1780, is given, together with the English decision,

that a belligerent has no right to interrupt neutral diplomatic communication, "if the dispatches are carried in vessels commissioned for that purpose." Neutral vessels of war are excluded by France, Buenos Ayres and Mexico. This is sustained by Ortolan and Hautefeuille, but not by the United States in the War of the Rebellion. A public ship of war has no right to enter a blockaded port. (Wheaton to State Department, 1846. No such opinion is given in his work.) Mr. Seward told Lord Lyons that "the Proclamation is a mere notice of an intention to carry it (the blockade) into effect." Some curious speculations of the Earl of Ellenboro, as to blockades, are given by Mr. Lawrence, on page 830. The efficiency of the United States blockade was defended by Lord Russell.

As to notification, Wheaton holds it "an error that blockade does not exist until notified diplomatically," but "it is obligatory from the moment that it is effectively established, and ceases with it. Mere diplomatic notification is of no value. Sir William Scott speaks of "blockade forming an arch and failing altogether if failing at one part." Mr. Wheaton (Minister to Prussia) in 1846, referring to the United States blockade of Mexico, hopes the diplomatic notification will be accompanied by action. In that case the United States allowed neutral ships in Mexican ports twenty days to leave. Our United States block- of the Rebel ports was notified by endorsement. But the courts decided warning not necessary after previous knowledge.

On June 27, 1861, Lord Russell said in Parliament, that "the Government of New Granada has announced, not a blockade, but that certain ports of

New Granada are to be closed. The opinion of Her Majesty's Government, after taking legal advice, is, that it is perfectly competent to the Government of a country in a state of tranquillity, to say which ports shall be open to trade and which shall be closed; but, in the event of insurrection, or civil war in that country, it is not competent for its Government to close the ports that are *de facto* in the hands of the insurgents, as that would be a violation of International Law with regard to blockades. Admiral Milne, acting on instructions from Her Majesty's Government, has ordered the commanders of Her Majesty's ships not to recognize the closing of these ports." *

In a dispatch of Lord Russell to Lord Lyons, July 19, 1861, he says, "It is impossible for Her Majesty's Government to admit that the President or Congress of the United States can at one and the same time exercise the belligerent rights of blockade, and the municipal right of closing the ports of the South; but an assumed right to close any ports in the hands insurgents would imply a right to stop vessels on the high seas without instituting any effective blockade. But Her Majesty's Government cannot allow the queen's subjects to be deprived of any of the rights of neutrals. They would consider a decree closing the ports of the South, actually in the possession of the Insurgent or Confederate States, as null, and they would not submit to measures taken on the high seas in pursuance of such decree."

DANA'S WHEATON.

Commercial Blockades were generally opposed by the United States until the Rebellion of 1861. Vessels of war are excluded by commercial blockade. Mr. Dana cites Mr. Wheaton's letter of 1846; also

* Lawrence's Wheaton, page 848, note.

Ortolan and Hautefeuille. The United States permitted vessels of war to pass the blockade of the Southern ports during the Rebellion. Occasional interruptions are discussed by him with judgment.

KENT'S COMMENTARIES.

"In time of War, countries not parties to the war, nor interposing in it, shall not be materially affected by its action; but they shall be permitted to carry on their accustomed trade, under a few necessary restrictions."

A neutral is not to favor one belligerent to the detrement of the other." Neutrals may become the carriers of enemy's goods without subject to confiscation of ship or neutral cargo, but the hostile cargo is seizable. Neutral property is inviolable in enemy's ships. Belligerents have no right to station forces in neutral territory to carry on operations."

A belligerent may sell prizes in a neutral port until forbidden, though this is not advisable. Enemy's property is liable to be seized in neutral ships and the latter were forfeit by the old law; but this is now changed. The English allow freight to neutrals, except in case of bad faith. The right to capture has been contested. "The rule has been steadily maintained by Great Britain.* In France it has been fluctuating." The Armed Neutrality of 1780 was acceded to by all the European powers except Great Britain. Her consent only was needed to its success. The United States admitted the English rule as the true doctrine of international law; but stipulate in treaties that "free ships make free goods." British doctrine was vindicated by Mr. Ward and

*Until 1856 when it was conceded by the Congress of Paris.

Mr. Manning. England receded temporally from the doctrine in 1854, being then allied with France. Neutral property in an enemy's ship is free.

"The two distinct propositions, that enemy's goods found on board a neutral ship may lawfully be seized as prize of war, and that goods of a neutral found on board of an enemy's vessel are to be restored, have been explicitly incorporated into the jurisprudence of the United States and declared by the Supreme Court to be founded in the law of nations. The rule, as it was observed by the court, rested on the simple and intelligible principle that war gave a full right to capture the goods of an enemy, but gave no right to capture the goods of a friend. The neutral flag constituted no protection to enemy's property, and the belligerent flag communicated no hostile character to neutral property. The character of the property depended upon the fact of ownership, and not upon the character of the vehicle in which it is found."

Judge Kent recites the views of the opposite side thus: "The rule of public law, that the property of an enemy is liable to capture in the vessel of a friend, is now declared, on the part of our government, to have no foundation in natural right; and that the usage rests entirely on force." He concludes: "But whatever may be the utility or reasonableness of the neutral claim, under such a qualification, I should apprehend the belligerent right to be no longer an open question; and that the authority and usage on which that right rests in Europe, and the long, explicit and authoritative admission of it by this country, have concluded us from making it a subject of controversy."

"The law of blockade is, however, so harsh and severe in its operation, that in order to apply it, the fact of the actual blockade must be established by clear and unequivocal evidence; and the neutral must have had due previous notice of its existence; and the squadron allotted for the purposes of its execution, must be competent to cut off all communication with the interdicted place or port; and the neutral must have been guilty of some act of violation, either by going in, or attempting to enter, or by coming out with a cargo laden after the commencement of the blockade. The failure of either of the points requisite to establish the existence of a legal blockade, amounts to an entire defeasance of the measure, even though the notification of the blockade had issued from the authority of the government itself."

" A blockade must be existing in point of fact; and, in order to constitute that existence, there must be a power present to enforce it. All decrees and orders, declaring extensive coasts and whole countries in a state of blockade, without the presence of an adequate naval force to support it, are manifestly illegal and void, and have no sanction in public law. The ancient authorities all referred to a strict and actual seige or blockade. The language of Grotius is *oppidum obsessum vel Portus clausus*, and the investing power must be able to apply its force to every point of the blockaded place, so as to render it dangerous to attempt to enter, and there is no blockade of that part where its power cannot be brought to bear."

"The government of the United States has uniformly insisted that the blockade should be effective by the presence of a competent force, stationed, and present, at or near the entrance of the port; and they

have protested, with great energy, against the application of the right of seizure and confiscation to ineffectual or fictitious blockades."

JACOBSEN.

Sir William Scott holds that "in all cases of this description, it is a clear and settled principle, that the mere transhipment of a cargo at an intermediate port, will not break the continuity of the voyage, etc."

"In the overwhelming superiority of Great Britain at sea, the right of blockade, as it has extended and perfected itself in the English legal decisions, will long be maintained, particularly with relation to the blockade of enemy's ports. It is however, incident to the nature of the subject itself, that every nation which may hereafter obtain the preponderance will probably adopt the same principles. Upon no other subject in the books and in practice, have we perceived more errror than upon this right of blockade."

"It is understood that a blockade by notification continues until the revocation of such blockade is notified." A time may be presumed when the notification can affect others to whom it was not directly made.

"The act of sailing to a blockaded port is sufficient to constitute the offence," after notification. "The offence of a breach of blockade, which commences with the voyage, attaches unto the end of that voyage." "On hearing of a blockade at sea the master is bound to alter his course."

SUMMARY.

The doctrine that, to receive recognition, a blockade must be effective, is now international law, and by

the Treaty of Paris has the guaranty of England, France, Russia, and the other parties thereto. What is contemplated by "effective" is, it seems, to be left to the judgment of the contracting parties. There is not likely to be any practical difference among them in this respect.

The Armed Neutrality of 1780, the first association of neutral nations which took open ground against pretended or paper blockades, defined an effective blockade to be that which created "*evident danger in entering*" the blockaded port.

In a debate in Parliament, Lord Granville said the force on the spot must be sufficient "to make it very difficult for vessels to obtain egress and ingress." The Prime Minister (Lord Russell) thought that "evident danger of entering or leaving" constituted an effective blockade.

The French Minister of Commerce (Rouher) says an effective blockade must "prevent approach without exposure to a certain danger."

Lord Brougham is more precise, blockade "to be effective, not necessary to render access impossible, but sufficient that it precludes the existence of any reasonable chance of entrance."

In various treaties the United States have defined what constitutes effective blockade. "It is declared that those places only are besieged or blockaded which are actually attacked by a belligerent force, capable of preventing the entry of the neutral." This clause is found in the treaty with New Granada, 1846; Guatemala, 1849; San Salvador, 1850; Bolivia, 1858; and also in that with Peru, 1851, save that instead of "actually attacked," it reads "actually invested or

attacked." But it is omitted in two subsequent treaties—one with Venezuela in 1860, and one with Hayti in 1864.

In the treaty with Venezuela, 1860, the definition is omitted. The text of Art. 12 runs thus, "unless such ports or places be effectively blockaded, besieged or invested," which phrase takes the place in the previous treaties of the following sentence "excepting those places only which are at that time besieged or blockaded."

In the treaty with Hayti, 1864, the definition is omitted. Article 17 merely says "unless such ports or places are blockaded ,besieged or invested." Here the word "effectively" is omitted.

The Treaty of Paris (1856) declares blockades only obligatory when "maintained by a sufficient force to really prevent the enemy from access to the coast." This definition is more stringent than any since that of 1780, except that contained in the United States treaties. Its "really preventing" is about equivalent to the "capable of preventing" of the United States, and means much more than the "evident danger" of the Armed Neutrality, and Lord Russell, M. Rouher, etc.

But as the United States have omitted the definition in later treaties, their sense of "effective" is left to the decision of the Courts according to international law, but is not ruled by any foreign treaty, as that of Paris, to which the United States are not a party.

Is it supposable that in the treaties with Venezuela, 1860, and Hayti, 1864, the United States purposely declined to commit themselves again to any views on

blockade, in view of the treating powers at Paris refusing to concur on privateering?

In some cases European powers have actually indicated the force that is to make a blockade effective—two to six vessels. But all sea officers know that the amount of force needed to render a blockade effective will depend on the character of the locality, and even on the nature of its defences.

It may be assumed that the use of steam has much increased the difficulty of creating an effective blockade in many cases, while in others it has decreased the difficulty.

At Charleston, a certain number of vessels would contrive to slip in, and a position was effected in the inner roads by the iron-clads, and the advance pushed well up to the forts at the entrance; this checked the *neutral* operations until vessels could be built, especially adapted to the peculiarities of the entrance—vessels drawing about six to seven feet and very fast, so as to pass over the shoals on either hand, where none of our vessels could float. Taking a good night they risked the fire of the outer line and ran over the shoals inside. This was met by large detachments of boats with howitzers, which lay close up to the entrance, so that even of this new style of steamers, many were run aground and destroyed by our fire. There were twenty other ports of my command, stretching over three hundred miles, which there was no difficulty in closing perfectly by a small force.

The blockading force will always have the advantage, where there are not heavy batteries to cover the entrance of the neutrals; where there are, a much larger force is needed to be effective.

It is necessary that a knowledge of the blockade should be brought to neutral powers, otherwise no violation thereof can be charged. The advocates of neutral rights claim that there is but one correct mode of notification, which is by giving the information to vessels attempting to enter the port blockaded. A renewal of the attempt subjects the neutral so warned to the penalties of violation. This is claimed and practiced now by the French Government, and was clearly enunciated by Count Mole in 1838, (then Minister of Foreign Affairs) and in 1861 by M. Rouher (Minister of Commerce).

The substance of this claim is that blockade exists from the moment it is effectively established, whether notified diplomatically or not; that warning on the spot is indispensable to convey the information to the neutral.

This is not, however, the British practice and doctrine, which considers that notice may be given diplomatically of blockade, sustained, however, by the fact; that is a notification to neutral Governments of the existence of an effective blockade; so that if a neutral vessel sails for a blockaded port, knowing the same to be blockaded, she is not entitled to a warning on the spot, but has violated the blockade by offering to enter.

This may be said to have been our practice during the War of the Rebellion and previously. The Presidential Proclamation of April 19, 1861, announcing blockade of Rebel ports, specifically stated that neutrals would be notified at the ports blockaded; but our Prize Courts decided this not to be necessary, after previous knowledge, and so continued.

Wheaton is by no means clear on the point of notification. He says warning at blockade is sufficient, and public declaration is sufficient in certain cases.

In several treaties the United States have agreed that vessels sailing for a blockaded port, ignorant of said blockade, shall be entitled to a notice on the spot; but as no provision is made that other vessels shall be so entitled, it is to be understood that they will come under the general rule as provided by international law, and may receive no other than the diplomatic notification.

One change is noticeable in the most recent treaties; the warning was in the early treaties to come from a commissioned officer of a blockade, or from commanding officers of vessels; but in the later it is not specified from whom; and this, concurrently with the ommission of a definition of blockade, and of the word "effectively" prefixed before to blockade.

Special notification is required by our treaty with New Granada, 1846, Article 20, which says: "And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is beseiged, blockaded or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place, but shall not be detained, nor shall any part of her cargo (if not contraband) be confiscated, unless, after warning of such blockade or investment from the commanding officer of the blockading forces, she shall again attempt to enter, etc."

The same provision is found in the treaties with Guatemala, 1849, and San Salvador, 1850. In the treaty with Peru, 1851, the warning is to come from

"the commanding officer of a vessel forming part of the blockading forces." In the treaty with Bolivia, 1858, the words are, "from any officer commanding a vessel of the blockading forces." (Art. 20.)

In the treaties with Venezuela, 1860, and with Hayti, 1864, the text runs, "unless after notice of such blockade or investment, she shall again attempt to enter."

It seems that until 1858 the United States were willing not only to define blockade, but to do so strongly. The blockading force was to be "capable of preventing the entry of the neutral," whereas even the Armed Neutrality of 1780 claimed no more than that there should be "evident danger in entering."

The treaty with Bolivia was negotiated by Mr. Buchanan's Administration, and signed in Bolivia in 1858. President Lincoln merely made the formal Proclamation in 1863.

The treaty with Venezuela was concluded in 1860, by President Buchanan's Administration, so that the ommissions in regard to to blockade do not seem to have regarded possible difficulty with the South.

The treaty with Hayti was by Mr. Lincoln's Administration, in 1864, and therefore expresses the views of the United States, after experience in the Rebellion, and may be summed thus:

1st. Declines to define blockade at all.

2d. Neutrals sailing innocently for a blockaded port shall not be captured, but shall be warned off.

3d. Who shall give notice, not specified; therefore left to the Government.

The omission of the definition of what constitutes blockade, exhibits a tendency to decline acceding to the ample concessions formerly made to neutrals, and to sustain the belligerent right more strongly than the prevailing fashion, thus inclining to the British decisions. And our Prize Courts showed a like tendency.

It is also to be noticed that the clauses above mentioned in our treaties have the general reputation of taking the extreme neutral ground in regard to "notification," whereas in fact, it applies only to vessels which had no knowledge of the blockade. Other vessels are not entitled to "notice on the spot," and the diplomatic notification was clearly to give the information needed. This is the British doctrine, and entirely adverse to present French practice and writers. So went the decisions of our courts, and directly in face of the President's Proclamation. It does not seem that any European power took exception to this, or any of the powers to whom more was conceded by treaty.

The receding from so strong a definition of blockade is significant of decided change in views, particularly the omission of even "effectively" blockaded in 1864, when in 1856, by the Treaty of Paris, even Great Britain had consented to say, "blockades to be obligatory, should be effective, that is, maintained by a sufficient force to really prevent the enemy from access to the coast."

Not that the United States ever contemplated recourse to blockades not effective, but that they would not commit themselves to more than plain right required. Perhaps a clearer perception of what the interests of the country might require.

It is the duty of a neutral to abstain from all participation in a war existing, or else to grant equally to both. It can take no active part whatever. On the other hand, a belligerent has full power to injure his enemy, and in so doing may even injure neutrals, so far as they have connection or may be supposed to have with the enemy. The extent of this is in dispute; the greater powers at sea sustaining the belligerent rights, and the weaker, the neutral rights.

Seldom is it noticed that an attempt to pass a blockade will of itself subject a vessel to penalty as a violator. Whereas Hautefeuille alone refers to such a proceeding, says "it is very uncommon but may happen." Now in fact during the War of the Rebellion, it was the rule so invariable, that scarcely a case occurred to the country. During my own command of two years off Charleston, I never knew of a case of a neutral allowing the blockade a chance to visit and notify; they chose the night and ran for it. This, even he admits, is a violation of blockade.

This omission of writers is the more singular, since from the nature of things the attempt to enter a blockaded port is likely to be made with every effort, not of force, but of evasion, for the plain reason that the offer to enter, or even the appearance near the port, must at least subject the neutral to inconvenience, and may involve detention. It is true that in the war of the Rebellion, our blockade was saved trouble by the additional fact that vessels going to the Rebel ports were always wholly, or in part, laden with unquestioned contraband of war, such as military stores, etc.

It is probably the fact that the appearance of honest and innocent traders off a blockaded port "is

very uncommon, but may happen," to use the words of Hautefeuille, with a different application.

History shows that there has been great inconsistency in the policy of some of the great powers, and that Great Britain has pursued a more steady course than others.

Thus, in 1854, France gave only diplomatic notice of the many blockades in which she co-operated with England against Russia, with no special notification; though in 1838, and in 1861, before and after, her authorities instructed her subordinates that such a practice was invalid.

The distance at which a vessel may be seized from the blockaded port is of consequence. Hautefeuille limits it to the locality itself; but a very different practice has prevailed, as he admits, going as far back as the Dutch edict of 1630, and adopted by all nations, even by the French, to sustain blockades. Their ordinance of 1778 enjoins the seizure of "neutrals carrying supplies to places blockaded, besieged, or invested," without limitation of place; and Hautefeuille adds: "But it certain that France considered as good prize every neutral vessel met at sea bound to a place blockaded."

The existence of the right is sustained by Aitzema, Bynkershoek, Wheaton, Ortolan, and by Sir William Scott. The latter says: "Another distinction between a blockade regularly notified and one simply *de facto*, is that in the first, the fact of sailing for a place blockaded is sufficient to constitute an offence." Hautefeuille seems to say that this usage has been abolished by the recent admission of all maritime powers but England, in which he assumes what is not

warranted; for the United States certainly have not acceded to any such right, and therefore do not exculpate neutrals at sea bound to a blockaded port. This practice Hautefeuille calls the *droite de prevention*, and he condemns it strongly as an abuse invented to sustain fictitious or paper blockades. Ortolan says: "After diplomatic notification, sailing for a blockaded place is a violation;" but he does not seem to approve of the practice. Lord John Russell seems to admit it, when he says, "But an assumed right to close any ports in the hands of insurgents would imply a right to stop vessels on the high seas without instituting an effective blockade." The inference is that "an effective blockade" gives the right to stop vessels on the high seas.

Wheaton does not seem to advocate it, when he says, "Some act of violation is essential to breach of blockade;" for that is equivalent to Hautefeuille's idea of seizure being limited to the very act on the spot. Sailing for the blockade, knowing of it, is not an *act* but an *intent* to violate. Yet why should a vessel go free that intended to violate her neutrality? It may be more difficult to prove it than if taken in the act, but it is not impossible. Blockade is violated by going out of a blockaded port, as well as going in. First, by going in after the blockade has been established, or rather the penalty of original violation continues, and is enforced on coming out. Second, by bringing out cargo taken on board after the blockade established, the vessels having been in previously.

The general law allows neutral vessels to depart from a port where they may be, when it is blockaded, with such cargo as then is on board, but to take in more afterwards is a violation of blockade.

Our treaties allow the departure of a vessel from the blockaded port, with her cargo, making no distinction as to when taken in, and the immunity of all such vessels on the capture of a place, with cargo, from confiscation.

Besides the above is the "right of pursuit,"—that is, vessels which have violated the blockade continue liable afterward to the end of the voyage, and may be captured.

Hautefeuille calls this the *droite de suite*, and, like the *droit de prevention*, it first appeared in the Dutch edict of 1630, and was afterward adopted by the other maritime powers. It is advocated by the writers who advocate prevention, though Hautefeuille condemns it roundly.

Ortolan says, "Violation of blockade makes liable for all the voyage." Both cases, the intent to violate, and the fact of having violated, demand a more critical attention than seizing in the act. In either case the right of capture may be justly enforced.

But a still more important question remains to be considered, DOES THE LAW OF BLOCKADE EXCLUDE NATIONAL VESSELS AS WELL AS PRIVATE SHIPS?

The United States definition of blockade is found in most of the treaties already quoted. Besides this definition, there is in all these treaties an article which provides for the exclusion of "vessels" by the blockading force. The meaning of this word "vessels" is indicated by the nature of the treaty itself, and by the explanatory terms that occur throughout the paper.

1st. The treaty is declared to be for the purposes of commerce and navigation; therefore, when *vessels* are spoken of, those used in commerce are to be understood, unless otherwise specified.

2d. The tenor of the several articles of the treaties conforms to the preliminary declaration; they relate to trade and those concerned therein. National vessels are not spoken of except in Articles 9, 20,21, (Bolivia) and are always specifically described, so that there can be no question that vessels of war are there meant.

The vessels, therefore, are clearly merchant vessels which are to be "turned away" by the blockading force, which is indeed explicit enough, from the provision in the article that no "part of her cargo," unless contraband, shall be confiscated.

In all their treaties with foreign nations, then, the United States have agreed that *only* commercial vessels shall be excluded by blockade, never that their public vessels are to be excluded. In other parts of the same treaties, vessels of war are specified when intended, as in Art. 9 with Bolivia, and others, when granting asylum to vessels, "whether merchant or of war"; and in Art. 21, "whenever a vessel of war."

The inference is unavoidable from these terms, that neither the United States nor the other contracting powers intended to concede to a blockade the right of excluding, or "turning away," their national vessels.

There is no reason, in the nature of things, why the right should be conceded, and good reason why it should not be, which will appear from the very

writers who are most prominent in maintaining the right to exclude national vessels from entering a blockaded port.

Hautefeullle says, "In most cases maritime blockade has no other object than to deprive a place or port of commercial advantages."

Ortolan says, "In fact the chief purpose of blockade, being to exclude all commerce by sea with the blockaded port, is entirely attained when the prohibition to enter or leave is applied to merchant vessels only."

No one will pretend for a moment that the commander of a national ship would so far derogate from all propriety as to violate the honor of his flag by acts prejudicial to the blockade. No stronger guaranty than a verbal pledge is required on other occasions when belligerent interests are involved; such, for instance, as in case of convoy, when, as the treaties declare, "the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and when they are bound to an enemy's port, that they have no contraband goods on board, shall be sufficient."

While, therefore, the exclusion of national vessels from a blockaded port in no wise contributes to the purpose of a blockade, it may be important that the communications of a neutral with his diplomatic representative should not be entirely suspended, and upon this consideration is based the opinion of high British authority against the exclusion of national vessels by a blockading force.

It does not appear that authority for excluding vessels of war from a blockaded port can be found in the common practice of the naval powers. Our own commanders have frequently, if not invariably, resisted such attempts, and under like circumstances have not refused admittance to the war vessels of neutrals.

In 1823, Commodore Biddle was sent in the *Congress* to land a United States Minister at Cadiz, then blockaded by the French as the headquarters of the Constitutional Government, but he was instructed not to insist upon entering if the French Commander objected. He did object and Commodore Biddle did not enter. It is, however, understood that the French Government disapproved of the action of its officers.

In 1826, Commodore Elliott refused to acquiesce in the dictum of the Brazilian Admiral then blockading Buenos Ayres, and passed the blockade in the *Cyane*. In 1827, Commodore Biddle did the same, and sent in the *Boston*.

In 1829, Commodore Biddle sent in the *Ontario* to communicate with Algiers, then blockaded by the French. The popular impressions at the time were that, in these cases, our officers would not concede the right to exclude our national vessels.

Admiral Dupont's order of blockade contained a direction to that effect, and I adhered to the same course off Charleston, until the operations within the blockade changed the condition of things. In a personal interview with a British commander, who sought to enter, I informed him that the intervention of our lines of attack prevented his entrance, not the blockade. When a young officer, I was, on two occasions,

in United States vessels which passed a blockading force, and the impressions at the time were that in both instances the commanding officer objected, though I am now too distant from means of information to verify these impressions.

The order of Admiral Pareja, when blockading the ports of Chili and Peru, in 1865, admitted national vessels to pass the blockade.

The first distinct order from a Government forbidding vessels of war to pass its line of blockade, was that issued by the French Government while blockading the Argentine* and Mexican† coasts, and this is probably the only authentic order of the kind. Occasional instances of naval commanders may have occurred; but it is believed not authorized or avowed by their Governments.

Both of these blockades were as singular in their character as in the particular feature referred to; that is, they were enforced without recognizing the existence of war with the countries blockaded. Hautefeuille calls them "peaceable blockades," and denounces them as illegal, in the course of a long argument. There is perhaps no better foundation for the order applying the law of blockade to vessels of war.

It is to be remarked that the British Government participated with the French in this anomalous blockade of the Argentine coast, and shared in whatever advantages accrued from excluding neutral vessels of war, although the decision of their highest Admiralty authority was in direct opposition to the latter practice.

*Begun in 1838, and continued for ten years, by France in conjunction with the English.

† This was in 1837–1838, by France alone.

In 1811, Sir William Scott expressed the opinion, "that a belligerent has no right to interrupt the communications between a neutral Government and its representatives in a foreign country through a port, the trade to which would otherwise be illegal."*

It is presumed that this judicial opinion eminating from the Court of Admiralty, necessarily binds the action of the British Government, in the absence of any official declaration to the contrary.†

The right to exclude neutral war vessels is maintained by Ortolan and by Hautefeuille, both recent French writers on International Law.

The conclusions of Ortolan are impaired by a seeming error in his premises. In speaking of a blockade undertaken in order to reduce a place, or force it to terms by cutting off its supplies, he says:—"In this case, maritime blockades are exactly similar to regular sieges of strongholds which occur in military operations ashore." It is difficut to perceive the resemblance. Sieges are intended to reduce a place by force of arms, and the cutting off of supplies is an incident to the proceeding; whereas, in blockade, no reduction by force of arms is in view, and a blockade by sea is only like a blockade by land, which is often resorted to when siege is not advisable, or in resisting an attempt to raise the siege. Maritime blockades of themselves contemplate only the suppression of commerce with a place, fortified or not. In connection with land forces, a reduction is generally in view. In such cases there is no question of the right to exclude ships of war, because the lines formed by the ships are then in fact a portion of the whole operation, and

* Lawrence's Wheaton, 827, note.

† Scott is declared by Parsons to be the guide in our Prize Courts.

of the lines of the attacking force, and they lose the proper nature of a blockade.

Hautefeuille's arguments are unavoidably weakened by the hostile *animus* exhibited towards British doctrine and practice, which seems to lead him to the entire condemnation of both, whereas, the decisions of Sir William Scott in Admiralty, have always been highly esteemed, and are recognized as precedents in our Prize Courts.

Hautefeuille is also widely at variance with the admitted principle and practice of blockade in other respects :—

1st. The "*droit de prevention*," that is the right to capture at sea any neutral vessel making for a blockaded port after knowledge of the blockade, even by fact, which right is "maintained by Aitzema, Bynkershoek, Wheaton, Ortolan and especially by that oracle of the English Admiralty, Sir William Scott, during the war of 1803 to 1814."

2d. The "*droit de suite*," which is defined to be, when a vessel leaves a blockaded port and is liable for violation "during the whole course of the return voyage;" this being supported by the same authorities as the previous right. He denounces them all roundly. Of course he can hardly be right in setting his opinion against that of all other writers, and against established practice.

There is one more authority, Wheaton, who concurs with these two writers, in excluding neutral vessels of war from blockaded ports. But he confines himself to the announcement of opinion, and this in an outside document; nothing of the kind appears in his work.

The right of a blockading force to exclude the national ships of neutrals,—

1st. Is not conceded by any of our treaties, nor by the nations who are parties to those treaties, and by fair inference is withheld.

2d. Is not prejudicial to the action of the blockade as admitted even by those writers who sustain exclusion.

3d. Is prejudicial to neutral interests.

4th. Is not conformable to the practice of our commanders, but is resisted by them.

5th. Is denied by decision of the British Admiralty Court, which is recognized as authority in our Prize Courts.

6th. Has never been authorized but by one Government, (France) and that recently.

7th. Is not sustained by other nations, and only by three writers, who give no authority in practice or doctrine.

From all these considerations it would appear unadvisable for the United States to adopt this measure without the concurrence of the other great maritime powers. At present it is of doubtful utility.

CONTRABAND OF WAR.

CONTRABAND OF WAR.

If any one desires to note how fluctuating and unreliable is International Law, he may take the practice in regard to "contraband" for the last two hundred years; the dominant maritime powers invariably seeking to extend its scope, while the others as neutrals would desire to restrain it, whether Holland or England, and these changing just as their interests required. The policy of France has always been that of the inferior maritime power, espousing the neutral privilege; and Hautefeuille advocates the extremest opinions in this regard, not willing to include even coal in the list of contraband, though essential to war steamers. Then as to notification of blockade, Hautefeuille insists on the "special," and says the "diplomatic" is not even an "essential formality," and not obligatory. The British doctrine and practice, and ours as settled by our Prize Courts, is that the "diplomatic" is sufficient. In our treaties, the special is only assigned to vessels sailing without knowledge.

After perusing the work of Hautefeuille it is impossible to avoid the conviction that nothing is less certain than the existence of any law by which the conduct of nations towards each other can be regulated during war. His own historical recital clearly shows that the stongest has always dictated the law without the slightest regard to anything but its own interests. Holland, England, and France have each in turn openly violated the admitted principles proclaimed by themselves and by the best written authorities. Nor are the latter always agreed among themselves what this law is. Hautefeuille in particular uses very little ceremony in affirming the law in opposition to many other writers, censuring them roundly for their opinions.

In peace, intercourse between nations is only affected by the regulations which each may make respecting its own dealings with other nations. No one assumes to regulate the intercourse of one nation with another.

But the existence of war at once confers certain rights upon the parties to it, in restricting the trade of others; because it is of universal acceptance, that the latter must in no wise render assistance to either belligerant which will serve him in prosecuting operations against the other.

What this assistance shall be is, in some respects, agreed upon by all. No arms nor ammunitions of war, such as cannon, etc., are to be conveyed by a neutral to either belligerent.

But there are other articles which, though directly, if not exclusively, applicable to the uses of war, are only so by conversion or combination, and these con-

stitute the great question that has more or less embarrassed the conduct of all great wars.

In general, the dominating maritime powers have sought to include these questionable articles in the prohibited lists, and to extend them as much as possible, while the less powerful have never failed to protest against this policy, and to limit the list of contraband to articles of primary use.

The reasons are very obvious, for the one having the most power on the ocean is best able, by its numerous cruisers, to seize contraband articles and to protect its own supplies of them, and in this way few have been consistent, but have varied their practice with their means. When the Dutch were a great naval power, they insisted on very ample views of contraband; when the ascendancy had departed from them they were among the protestants in favor of a very limited contraband. So with France at a different period of her history. But however England may be charged by others with the freest use of her power, it cannot be said that at any time she has advocated a limited contraband, or protested against the most extended scope by others.

In fact, it is impossible rightly to lay down any rule of contraband that shall be fixed. It varies with the nature of things and the circumstances. What may assist one nation may not assist another. It would be useless to say that coal and iron, and their fabrications, should be contraband against Great Britain; or that pitch, tar, turpentine, masts and ship-timber should be contraband to Sweden or Norway; or that cotton, or provisions, or naval stores generally, should be contraband to the United States. Coal and steam

machinery for ships would hardly have been contraband half a century since.

What then must be the guide, or is there any? The answer is, the general custom of nations, and the special policy of a particular state as expounded by its prize courts. The British prime-minister has so acknowledged before Parliament.

The difficulties are by no means so great as the advocates of special interests would have us believe.* To say that that only is contraband which, in its existing condition, can only be used for war, is nearly an absurdity. The article is contraband, but its components, or that which gives it effect, are not. Thus, cannon are forbidden, but the powder which alone can make them of any account, is not contraband. Then powder may be contraband as a munition of war, but the nitre and sulphur from which it is made are not contraband. It may happen, too, that these are produced in quantity in a single country only. Thus, nitre for all the world is obtained in a single English province; hence war with England cuts off all the supply of her belligerent, except through neutrals, as revolutionary France experienced when driven to her own domestic resources, which did truly furnish nitre, but at a cost to her agriculture which a state might well shrink from.

The rule might even go further. Arms are made in parts, and barrels, stocks, locks, ramrods, etc., might be carried in different vessels; and so with breech-loading cannon.

A neutral cannot, therefore, be said to adhere to his part when he conveys the components of arms or of munitions to an enemy.

* It is the *usus bellici* which determines an article to be contraband. 1. Kent, 148.

As for powder, is that not a munition? If not, what is it?

Again, the destination of an article may make it contraband, as well as its final (not immediate, only) use.

And one of our soundest authorities (Kent) pronounces this a just rule, which would apply in the case of articles being the product of a country.

There are singular inconsistencies in our own treaties touching contraband. In some nitre and sulphur are included, in some they are not; so with naval stores and provisions.

As a consequence, if at war with a third nation nitre would be contraband under one flag, and not under another, unless made so by the general usage.

From these general remarks, we pass to what the authorities recognize as contraband.

HAUTEFEUILLE.

Hautefeuille defines contraband to be objects of first necessity for war, or exclusively for its uses—articles that can be so applied directly without mechanical change. The components of powder by this would not be contraband, though powder is.

"In the question before us, as in all the others, the treaties concluded by European nations among themselves, or with the new countries of America, constitute the international jurisprudence, and consequently the secondary right properly called." It is not necessary to go beyond the middle of the seventeenth century. "It was only about this period that the international maritime right began to issue from the obscurity of barbarousness, and that the European

states understood the importance of navigation and commerce."

(It is needless to go even that far, as the means of maritime war have changed so much, and are still changing.)

The treaty of the Pyrenees (Nov., 1659) is one of the most celebrated treaties in these matters, since it has long served as a base for all the transactions of nations. In this saltpetre is included.

The commercial convention consequent upon the treaty of Utrecht, (1713) named contraband, saltpetre included. Article 20 enumerates articles which may give rise to difficulty, their use being common to peace and war, provisions and coal among them. "The treaties of Utrecht, through the whole of the eighteenth century, formed the basis of the public maritime right of Europe, and a large number of international conventions borrowed from them the definition of contraband of war."

In 1786, the treaty between France and England included, word for word, the articles of the conventions of Utrecht.

The treaties extending contraband of war are few in number, France appearing twice among them, in 1630 and 1794.

The treaty of 1742, between France and Denmark, extends the list of contraband, and includes all naval stores. This violation of professed principle Hautefeuille defends on the score of being a reprisal.

Of all the treaties which have extended the list of contraband, the most important is that of 1794–5, between Great Britain and the United States. It

prohibits naval stores as contraband. In respect to provisions and other articles, it creates a sort of prohibition *ad libitum* at the discretion of the belligerent. He gives what he supposes to be the reasons of the parties.

The treaties extending contraband beyond arms and their munitions are so few and so faulty, in respect to international law, Hautefeuille thinks they should be rejected, and he gives a sketch of the difficulties attendant on the contraband clauses of the treaty of 1794–95, between the United States and England. (It seems that Vattel included in contraband "timber, and all that is used in the construction and armament of ships of war, horses, and even provisions on such occasions as it may be expected to reduce the enemy by famine.")

The treaties of the Pyrenees and of Utrecht have always been regarded, and are still to this day appealed to, by all nations as the bases of European maritime rights.

Hautefeuille gives a list of what he thinks should be contraband, in which he includes saltpetre; but he excludes all articles intended for the equipment of neutral vessels and their crews.

The great nations, when at war, endeavor to destroy the trade of neutrals. He loses sight of the fact that neutral trade is increased by war; being restrained of this increase is no loss. Neutrals must not aid either belligerent with arms or munitions.

Towards the middle of the seventeenth century, Holland was one of the most powerful nations at sea. She was the first to make decrees extending the list

of contraband; and yet this nation was then bound by solemn treaties which positively restricted contraband to arms and munitions.

In the middle of the eighteenth century, when her maritime power began to fail, Holland began to affirm that contraband should be limited to arms and munitions.

The example set by Holland was followed by England. Allied to Holland in 1689, against France, she began to interdict provisions and naval stores. Soon contraband gave way to ficticious blockade.

In 1744, in the face of all treaties, especially that of Utrecht, she made timber for ship building and naval stores contraband.

Peace came, and by many treaties contraband was limited to arms and munitions of war; yet, in 1755, war opening with France, England declared contraband naval stores, provisions, and productions of the belligerent colonies. Peace came in 1763, and contraband was limited; but, in 1778, England once more enlarged the list of contraband, but was checked by the Armed Neutrality of 1780. In 1793, grain, flour, and all matters of food were made contraband by England, which in fact interdicted all commerce by blockade.

Not so France; she followed a consistent policy for centuries. The Order of 1681 is still the French rule for contraband, prohibiting only arms and munitions of war. "Yet, I say with regret that even France—that France which so long declared herself the protectress of neutral commerce, has at times strayed from the right path, violating the precepts of divine

law, treaties, and the principle of her own laws and policy."

In the war of the Spanish succession, France placed naval stores in the list of contraband. She went further, and prohibited trade in the enemy's products, raw or manufactured.

In the wars of the Revolution and the Empire she permitted herself to reply with similar measures to those of England, which Hautefeuille excuses.

Like the others, Spain enlarged the list of contraband in her day of power, and fell back when weak. In 1793, then allied with Great Britain, she declared contraband provisions of all kinds, and naval stores—the only deviation of that power from her policy and principle.

The United States have always adhered to a limited contraband.

England seized Prussian vessels with naval stores for France in 1744. Frederic sequestrated an English loan, secured on Silesian revenues, and compelled England to give indemnity.

Among jurists, Bynkershoek was the first to defend the primitive right, limiting contraband to arms and munitions of war. He opposes the inclusion of material for arms and munitions, and yet places saltpetre in contraband.

A large number of writers have enlarged the list of contraband, but they do not agree with each other as to the articles. Some make two classes of contraband, one positive, the other dependent on circumstances. At the head of these is Grotius. These

class all articles of commerce into, 1st, such as appertain to war only; 2d, those useless in war; and 3d, those of common use to peace or war, that is, material which can be converted to purposes of war. Hubner has three classes, and the doubtful are determined by the destination, contraband if bound to a camp, army, place blockaded, etc. Ortolan admits certain articles of material to be made contraband in extraordinary cases. In fact he makes two classes of contraband. The British courts make two classes also, contraband and *quasi* contraband; but the latter is not confiscable. Hautefeuille assails Grotius, and disposes of him in two lines; says, besides, that he confounds contraband with blockade, "things essentially distinct," and even opposite. "Blockade is the right of a belligerent and has no analogy with the prohibition of contraband trade."

He also makes an argument against Ortolan and the British doctrine. Vattel is quoted by him incorrectly; he spoke of blockade, not of contraband. The "*ad absurdum*" is violent against conditional contraband, and he talks absurdly. Articles of doubtful or conditional character, money and bullion, grain, flour, etc., "cannot in any case be considered as contraband of war." Naval stores are enumerated, and he contends are not contraband, because some labor is needed to convert them to uses of war. (What an absurdity!) He holds that they are not prohibited by treaties which he calls secondary international law, only arms and munitions of war. He forgets that these treaties never are carried into practice. Hautefeuille, however, admits that, in spite of international law and treaties, "most of the European nations have attempted to prohibit trade in the materials

proper for the construction and equipment of ships."

Naval stores were interdicted by "*lois interieures*" as far back as the middle of the seventeenth century. Holland began, and England and nearly all other nations followed. France herself adopted this course. Of the two principal arguments that naval stores are contraband, one is derived from the treaties which make them free. The liberty of selling naval stores to belligerents is most important to people whose chief resources are of that kind. (Is it of no consequence that the reverse is the case with the belligerents waging war at great cost?) Are vessels contraband? Hautefeuille thinks unarmed vessels are not. Are iron, steel, copper and other metals, sulphur, saltpetre, charcoal, contraband? He says not, as they cannot be used for war purposes as they are, but need conversion by labor. (His pet argument.) Besides, all may be used for peaceful purposes. Many international conventions consider saltpetre as a munition of war, therefore contraband; among these are some of the most liberal treaties in regard to commercial liberty. Sulphur, says Hautefeuille, is free, why not saltpetre? (Curious reasoning, showing ignorance extreme. Saltpetre constitutes three-fourths of powder; it is held in monopoly by England; it is difficult to keep sufficient of it on hand against contingencies. Sulphur is procurable in many places, only one-tenth of it is required; it can easily be kept, as it is not bulky. Saltpetre may be made, as in France, but with difficulty, in quantities. Both are and should be contraband.)

Equally absurdly Hautefeuille asks. Is cotton contraband, because some of it may be made into gun

cotton? (Any practical man can answer. Yet this is absurdly lugged in as a reason why saltpetre and sulphur should be free.) Are steam engines and coal contraband? Ortolan classes the first as conditional contraband; Hautefeuille, as free; regarding them as naval stores. England, in case of war, would declare coal to be contraband, says Hautefeuille who argues, as usual. Coal has pacific uses, therefore he puts aside the fact that it is now a chief means for war steamers, which will never be admitted. Coal will be contraband, at least conditionally.

He concludes that nothing is contraband but arms and munitions of war. (Is not an engine as much an arm for a ram without cannon, as coal is a munition of war for the engine?) He thinks the treaty of 1778, between France and the United States, a model as to contraband, except as to horses and saltpetre. He discusses if there can be contraband without declared war, and cites the case of a prize with contraband under the blockade (pacific) of La Plata by France and Great Britain, which was released by a French court on the ground that there was no war, therefore no contraband.

Sir William Scott has no weight with Hautefeuille who looks on him as a mere organ of the English Government, but Hautefeuille quite as pertinaciously defends French doctrine.

DANA'S WHEATON.

In 1783, Mr. Jefferson, in reply to the British British Minister, objecting to the sale of arms to France, wrote "that the right of our citizens to make, vend and export arms," which were mechanical and

commercial callings, was one which a foreign war could not take away; it was done subject to capture and condemnation by belligerents.

This was followed by a circular forbidding the arming or equipping of vessels in the United States by belligerents, leaving the purchase of contraband free to both belligerents.

The various adjudications by our courts are given on pages 536 to 564, respecting breaches of our neutrality by vessels fitting in our ports to cruise against the commerce of England, in her war with France, and against the commerce of Spain and Portugal during the struggle of their colonies for independence,* showing the efforts of our government to preserve its neutrality in good faith, the decisions of our courts in the same direction, and the difficulty of maintaining that neutrality against the sympathies of our people for one of the belligerents. Dana's summary of decisions by our courts shows the principles deducible from our laws. One of these is interesting: "Is the intent one to prepare an article of contraband merchandise, to be sent to the market of a belligerent, subject to the chances of capture and of the market? Or, on the other hand, is it to fit out a vessel which shall leave our port to cruise, immediately or ultimately, against the commerce of a friendly nation? The latter we are bound to prevent. The former the belligerent must prevent."

The British Neutrality Act of 1819, made after that of the United States of 1817, is almost in the terms of the latter. "A striking difference is the omission by England of the preventive sections (10 and 11) in the American Act." These require secur-

* Note 440.

ity that no hostile acts shall be committed against flags at peace with the United States, and authorize Revenue officers to detain suspicious vessels. The American Act is also more stringent as to forfeiture.

Then follows an interesting synopsis of the questions between the United States and British Governments, as shown by their correspondence.

From this it appears that the Laird Rams had nearly involved war. As late as the 5th of September, 1863, they were on the point of sailing, and our Minister went so far as to write the British Government, "*this is War.*" On the same date, Mr. Seward, of course ignorant of the exact state of the case, wrote our Minister, "If the rams sailed, and attacked our blockade or ports, it would make a retaliatory war inevitable." Collision was certainly imminent; and this was one of the causes that influenced me from risking the monitors in a general attack on Charleston, which might have left them defenceless against this contingency.

Mr. Dana has no doubt that arms are contraband, and that other articles are not, such as books, etc. The dispute is in regard to articles of equal use in war or peace. Some writers contend these are not contraband, and others that circumstances may make them so. The latter is unquestionably the British doctrine, exhibited in treaties, and decisions of courts; and "in the main is the American doctrine," recognized in the treaty of 1794 with Great Britain. Other treaties exclude naval stores; some include saltpetre and sulphur, and some confine contraband to arms. The treaty with Mexico includes provisions for a besieged port. Barley and oats passing from one neutral to another were in one case held contra-

band because deliverable "on board the enemy's fleet lying in the port."

Judge Kent distinguishes between ordinary use and "probable destination to military use:" "It is not an injurious rule, which deduces the final use from the immediate destination." Kent seems to quote Lord Stowell. Prof. Parsons's Maritime Law gives various decisions in regard to this class of articles, ships of war, sailcloth, rosin, sulphur, tallow, ship timber, pitch and tar, which may be contraband.

Hautefeuille sustains the strict rule. Ortolan admits that sulphur, saltpetre, and steam machinery may become contraband, but says coal should be free. Massé, Tetens and Hubner are for conditional contraband. In the Crimean War the British stopped coal on the way to Russian ports.

In 1859, the British Foreign Office replied that "coal may, in many cases, be rightly held to be contraband of war."

Dana thinks that the prize courts of Great Britain and the United States, in the absence of treaty stipulation, "would inquire into the circumstances of each case," and that "they would include ships, marine steam machinery, masts and spars, (manufactured) components of powder, coal," etc. "Not necessary that there should be a proved intent to deliver into military hands to make the case one of contraband. The right of the belligerent to prevent certain things getting into the military use of his enemy, is the foundation of the law of contraband. I am inclined to the opinion, that an actual intent to deliver articles capable of military use directly into military hands, condemns the articles, at all events, as a voluntary

intervention of their owner in the war; and that, whether there be or be not such an intent, the belligerent may capture certain articles, because of their destination to a place where they will come under the enemy's control, and so may be used by the enemy in direct military operations."

What is the penalty for carrying contraband? "By the present practice of nations, if the neutral has done no more than carry goods for another which are in law contraband, the only penalty upon him is the loss of his freight, time and expenses."

"If the act of the neutral carrier amounts to a hostile service, his vessel is liable to condemnation."

"If a cargo is destined to be carried through blockade, it can be captured at any stage of the voyage."

ORTOLAN.

A neutral government is not obliged to prevent its citizens from conveying contraband, only not to protect them.

Writers on contraband—Bynkershoek, Heineccius, Vattel, Valin—are reviewed. Ortolan's views are that there are three classes of merchandise: 1st, positively contraband; 2d, conditional; 3d, not. In the latter he includes provisions, etc. Saltpetre is universally included as contraband in treaties. (Here he is in error.) He thinks the vessel carrying contraband should never be confiscated. He cites Scott as saying that the vessel must be taken *in delicto* going to the hostile port.

"The moment that a vessel leaves port for a hostile destination the offence is complete, and it is

not necessary to wait for the occasion when she seeks to enter the enemy's port with her cargo."

The ordinance of 1681, of Louis the Fourteenth, only confiscates the contraband, which, according to Bynkershoek and Vattel, was international law. That of Louis the Sixteenth (1778) confiscates vessel and cargo when the contraband is three-fourths the value of the cargo.

The treaty of 1800, between France and the United States, releases all but the contraband, as do other treaties of the United States. If the vessel is fitted for war, she is confiscated. None ought to be more liable. When ready to be armed and equipped, she is made confiscable by some treaties.

But it is no longer a mere question of contraband when vessels of war are constructed, armed or equipped on the territory of a neutral for a belligerent. This is a violation of neutrality; and he deems it an error in the Supreme Court of the United States in 1815 to decide otherwise. The American Neutrality Acts of 1794 and 1818 make it criminal. So with the British Foreign Enlistment Act. Apart from these, it is a violation of neutrality by international law.

Ortolan pays a noble tribute to Lord Stowell. He defines contraband, and denounces the British *quasi* contraband, but is willing to extend contraband to certain articles.

"If the materials suitable for preparing arms, the instruments or the munitions of war, are so selected and prepared, or are conveyed under such circumstances that the fabrication or the use for which they are designed becomes unquestionable, their transportation

in parts or by detached components being only a means of eluding prohibition, the captor should be authorized, when the facts are fixed, to consider these objects as true contraband of war." "Such might be, according to circumstances, ship-timber evidently chosen and worked for ships of war or gun carriages; boilers or engines for the enemy's steamers; sulphur and saltpetre for making gunpowder, or other elements of arms or military stores."

Dr. Pratt on Contraband, classes coal as conditional contraband. Sir James Graham gave a like opinion in Parliament in 1854. But in 1859, France and Italy declared coal non-contraband. Ortolan will not agree that provisions are ever contraband. They must be kept out by blockade. In case of the conveyance of a military force, Ortolan says international law makes the vessel prize. The conveyance of public dispatches is equally an offence. He thinks that if the Congress of Paris (1856) had agreed upon some definition of contraband, accepted by the various maritime powers, it would have done better than in declaring "privateering abolished."

LAWRENCE'S WHEATON.

"Destination is essential in a question of contraband;" the change in implements of war is of no consequence. If the *usus bellici* changes the "law shifts with them." The British Orders in Council, (Feb. 18th, 1854,) were no "fresh declaration of contraband." "The courts of maritime jurisdiction determine that question."

Lord Stowell says the British Admiralty Court is "a Court of the law of nations, and administers the law of nations exclusive of municipal jurisprudence."

Sir J. McIntosh said "Instructions might be warrant for Her Majesty's officers, but courts were not bound by them; they proceeded by the law of nations."

The Supreme Court uniformly maintain that "enemy's goods in neutral vessels are subject to capture and condemnation as prize of war," according to the law of nations, and the Executive has no power to change it without action of Senate in treaty. "For the reason already explained, the Executive alone is not, under the Constitution of the United States, competent to effect modifications of the public law, and should the case come before the judiciary, the courts might not deem themselves bound by the assurance contained in Mr. Seward's instructions of Sept. 7th, 1861, to Mr. Adams, and reiterated in the note of Dec. 26th, 1861, to Lord Lyons, that the neutral flag should cover enemy's goods not contraband of war."

The British Government will not decide what is held "contraband" by other belligerents. "The Prize Court of the captor is the competent tribunal to decide whether coal is or is not contraband of war."

The Earl of Ellenborough asked, in the House of Lords, (1861) "How are plain men to find out what articles have of late been considered contraband of war by the usage of nations? They must look through all the recent decisions of courts of Admiralty jurisdiction, not only in this country but in others; and it is highly probable that they will be found conflicting with each other." Lord Brougham thought coal might be looked on as contraband. The Supreme Court "appears to have been disposed to adopt all the principles of Sir William Scott, as to

provisions becoming contraband under certain circumstances." *

Earl Russell, Sept. 22d, 1862, said, "If articles not contraband are shipped for any blockaded place, they may also be seized upon the high seas according to the law of nations."

In different treaties the United States have declared what is contraband of war. These are arms and all "belonging to the use of arms"—military clothing, cavalry horses and harnesses, and all offensive or defensive arms of any material. All other merchandise and things are subjects of lawful commerce, except to places besieged or blockaded. (Hayti, 1864.)

Where contraband is not defined by treaty the United States proceed by the common law of nations.

Lawrence says:—"Notwithstanding the continuous diplomatic efforts, since our very origin as a nation, to change the rule, our Supreme Court decides what the law of nations is, as declared at the time that the United States were a component part of the British empire, and not what publicists might deem most accordant with just theory or what special conventions have established, etc." †

It seems moreover that the Supreme Court will not recognize any changes in the law, except made by treaty. The Proclamation or the action of the President alone is not sufficient.

In one instance the State Department receded

* Wheaton, 810.

†Lawrence's Wheaton, 777, note.

from a permission given to the British Minister, on the ground that the United States District Court had decided otherwise.

Kent says that "those doctrines of the English Prize law were essentially the same with that adopted by the American Congress in 1775, etc." "They were likewise fully adopted by the Supreme Court, when we came to know and feel the value of belligerent rights, by becoming a party to a maritime war."

The rules of International Law recognized by the authorities in the United States, are those admitted by common custom at the period when the United States became independent, except when modified by treaty. And the practice of our Prize Courts, which are the real expounders of the law, conforms to that of the British courts, except when modified by treaty.

First, then, what have the decisions of our Prize Courts made contraband; that is, during the hostilities waged to sustain the Union, and which probably we shall retain?

In general, most of the prizes made during this period, contained some articles unquestionably contraband, which would have affected the cargo and vessel as belonging to the same owner. Many were filled with contraband, but the proceedings, save in a few cases, were for violation of blockade, probably as affording less ground for defence.

There were, however, a few cases decided on the question of contraband, and on these the court pronounced: Memphis, Stephen Hart, Springbok, Peterhoff, etc.

From these it will be seen that our courts took the amplest scope of contraband, and followed fully the doctrine of Sir William Scott, as enunciated in the British High Court of Admiralty.

The principles which were to rule in the United States courts were stated plainly in the first case that arose for adjudication.

In the United States District Court for the District of New York, Judge Betts said: "The practice in prize proceedings in the courts of the United States is governed by the rules of Admiralty law disclosed in the English reports, when not regulated by decisions or rules of the American courts." *

"Implements and munitions of war which in their actual condition are of immediate use for warlike purposes, are to be deemed contraband whenever they are destined to the enemy's country or to the enemy's use." (Peterhoff.)

If the court had gone no further the list of contraband would have been restricted to the narrowest limit claimed by neutrals.

But the court proceeded: "In England all manufactured articles which in their natural state are fitted for military use, or for building and equipping ships of war, among which articles cordage is included, are contraband in their own nature."

"The probable use of articles is inferred from their destination, and if articles capable of military use are going to a place where any need of their employment in military use exists, it will be presumed that they are going for military use, although it is possible that they might have been applied to civil consumption." (Peterhoff.)

* The Prince Leopold, Blatchford's Prize Cases, 90.

Wheaton says that "Although the general policy of the American government in its diplomatic negotiations, has aimed to limit the catalogue of contraband, by confining it strictly to munitions of war, excluding all articles of promiscuous use, a remarkable case occurred during the late war between Great Britain and the United States, in which the Supreme Court of the latter appears to have been disposed to adopt all the principles of Sir William Scott as to provisions becoming contraband under certain circumstances."*

The United States, therefore, have extended the list of contraband so as to include not only implements and munitions of war, but also those capable of military use, including ship-timber, naval stores. The destination will also give contraband character to articles of civil consumption, such as provisions.†

Treaty stipulations only will cause the courts to deviate from these views.

TREATIES.

What do our treaties, then, prescribe in regard to contraband?

Our treaty with France (1778) enumerates as contraband arms and munitions, which enumeration includes saltpetre; also, the non-contraband—clothes, wearing apparel, metals, provisions, ship-timber, naval stores, and all others not named. The circumstances of this treaty influenced its stipulations. The colonies were struggling for existence and acceded to the terms dictated by an ally.

Our treaty with the Netherlands, (1782) prohibits arms and war-like stores, including saltpetre and

* Laurence's Wheaton, 810.

† 1 Kent, 168.

sulphur; and among the non-contraband it names ship-timber, naval stores, and all not named in the contraband list.

Our treaty with Sweden, (1783) prohibits arms and munitions, including saltpètre and sulphur; and its list of the non contraband is similar to that in the French treaty. The same influences operated in each of these three cases.

Our treaty with Prussia, (1785) avoids definition of contraband; only stipulating that such may be detained, and may be used if paid for, thus leaving definition of contraband to common international law.

Our treaty with Great Britain, (1794) prohibits implements of war, includes saltpetre, and adds ship-timber, and "whatever may serve directly to the equipment of vessels." Provisions, if taken as such, are to be paid for.

Our treaty with Spain, (1795) prohibits the usual contraband, and includes saltpetre. Clothes, metals, provisions, naval stores, etc., are non-contraband.

In our second treaty with Prussia, (1799) contraband is confined strictly to arms, etc., but includes saltpetre and sulphur.

In our second convention with France, (1800) contraband is confined strictly to arms, munitions of war and instruments for the use of troops. Saltpetre is included and placed second on the list, gunpowder being first.

Classifying these treaties we find that, so far as regards the American Republics, the contraband is confined to the strict neutral rule of arms and muni-

tions of war. With New Granada and San Salvador only, provisions are added when imported into a place besieged or blockaded. And with only one of these States is saltpetre made contraband, namely, Venezeuela, 1860.

The rule of strict contraband is stipulated for by the United States in treaties with Mexico, Guatemala, San Salvador, Hayti, Colombia, Ecuador, Brazil, Peru, Bolivia, Chili.

The same rule, with the addition of Saltpetre, is stipulated for with Venezuela, France, Spain, Holland, Sweden, Prussia.

Contraband is not defined in the treaties with Honduras, Costa Rica, Argentine, Paraguay, Portugal, Belgium, Denmark, Russia, Hansetowns, Austria, Italy, Turkey, Greece, China, Morocco.

Nor has contraband been defined with Nicaragua, Dominica, Uruguay, Egypt.

Between the United States and Great Britain contraband is defined on the largest scale.

The effect of these different treaties is to place the United States rather singularly with the great powers of Europe. With Great Britain we stipulate for the most extensive contraband. With Russia, Austria, Italy, Denmark, Portugal, Belgium, Hansetowns, Turkey, no contraband is defined.

With France, Prussia, Spain, Holland, Sweden, we are bound to the most limited contraband, which is extended to nitre.

In effect, the law of contraband will be interpreted in its widest scope as applied to Great Britain, Rus-

sia, Austria, Italy, etc., and in its most restricted scope by our courts towards France, Prussia, Spain, Holland and Sweden.

How will these antagonistic views operate in the various combinations that may arise between these powers at some future day?

It is impossible for the wisest to reason on such uncertain data, and is it not best, in view of these and similar complications, to leave a question so vexed to our courts, untrammelled by treaties? Surely under such momentous circumstances the wisdom of our judiciary can be more safely trusted than the loose and too often partially considered ponderings of two or more persons, in concocting stipulations which their inexperience may make a snare for the unwary. Treat as we will, the general law remains, while a great naval power refuses assent. Even ours will make of no effect the will of all the great powers as expressed in 1856 at the treaty of Paris, so long as we refuse to become a party thereto?

In this respect, Russia, strenuous as she has been in leading the Armed Neutrality of 1780, has bound herself by no treaty to the United States. Contraband for her is still defined by the common law. Great Britain has in reality done no more, for the terms of her treaty with us are no more than a general sketch of her own system as expounded by her courts and ours.

The Prime Minister answered wisely in saying that the government would not undertake to define contraband, as that must be left to the courts.

During the unprecedented blockade of the war of the Rebellion, the question was most happily simpli-

fied in its application by the fact that the violations of neutrality were committed almost solely by the vessels of one nation, whose rule of contraband was as strict as our own.

But suppose that we had had to deal with cruisers or traders under the French, Prussian or Dutch flags, as well as under the English. The latter, by treaty, would have been seized as contraband of war, for carrying naval stores or provisions, and condemned, when the former would not even have been detained. Would not such different treatment have seriously hazarded our good relations under very critical circumstances, although entirely justified by treaty?

At any time that the United States occupies the position of a belligerent, the same difficulties may be imminent; and the effect will be to drive under the favored flags the provisions and naval stores that would be contraband under the British.

At all events, as belligerents the naval commanders of the United States would be guided in seizure for contraband as follows:

1st. If the vessel be British, all of her cargo will be contraband, whenever attempted to be carried to an enemy, that consists of—Arms and implements serving for the purposes of war by land or sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket rests, bandoliers, gunpowder, matches, saltpetre, balls, pikes, swords, head pieces, cuirasses, halberts, lances, javelines, horse furniture, holsters, belts, and generally all other implements of war; as also timber for ship building, tar or rosin, copper in sheets, sails, hemp and cordage, and generally whatever may serve

directly to the equipment of vessels, unwrought iron and fir planks only excepted. And these are subjects of confiscation.

If, however, provisions and other articles not generally contraband are seized as such, in accordance with the law of nations as interpreted by our courts, or by the British courts, these are not to be confiscated, but shall be paid for at their full value, "with a reasonable mercantile profit thereon, together with the freight and also the demurrages incident to such detention." *

There can be no doubt that vessels adapted to purposes of war, steam machinery for sea steamers, together or in parts, are contraband absolutely under the first head; and coal, too, if by its destination it is likely to go to the enemy.

The use of conditional contraband will necessarily depend for seizure on the instructions issued from the Navy department, so far as the article applies. Their liability as contraband is altogether different from that which attaches to violation of blockade.

If the neutral be under the flag of Russia, Austria, Italy, Portugal, Belgium, Denmark, Hansetowns, Turkey, Greece, Honduras, Costa Rica, Argentine, or Paraguay, the definition of contraband being left to the common law, must be expounded by our Prize Courts in the absence of treaty stipulations.

1st. Cannon, muskets, and their implements and munitions, entire or in parts; gunpowder and its components, nitre and sulphur; all kinds of military clothing and their fabrics and equipments; torpedoes and apparatus therefor.

* Treaty of 1794, with Great Britain, Art. 18.

2d. Naval stores, such as tar, pitch, rosin, ship-timber, sails, hemp, cordage; copper in sheets, steam machinery for sea steamers, entire or in parts; vessels adapted to war or their armor.

3d. Provisions, coal and other articles which, though not in their nature for war, yet by their destination for a blockaded place or hostile fleet or army, may serve the purposes of war.

Many of the above come directly under the law of admitted contraband, such as those enumerated in the first head; and most of those under the second head have been decided on in the courts, as the remainder probably will be when brought there.

As regards the articles under the third head, the officer must be guided as to their intended use, by the exercise of a sound discretion as to their final destination.

The movements of the most important expeditions, military or naval, may depend on timely supplies of coal. Many nations depend on supplies from others, and even those which produce it may by accident run short. Cruisers that dare not to venture in sight of an enemy, may effectually cripple him by cutting off his coal on the way; under which circumstances this article certainly becomes contraband by destination.

If the neutral belongs to the flag of Mexico, Gautemala, Hayti, Columbia, Equador, Brazil, Peru, Bolivia, or Chili, then the contraband is limited strictly to arms and munitions.

If to New Granada or San Salvador, then besides the articles of strict contraband it is prohibited to carry "provisions to a besieged or blockaded place."

The word imported, in the treaty, is by no means clear, for when the provisions have been imported they would be beyond the power of the belligerent; the usual construction of designation would no doubt be applied.

If the neutral is of the flag of Venezuela, France or Spain, then articles of war strictly, and saltpetre are contraband.

If under the flag of Prussia, Sweeden or Holland, the contraband is limited to the limited list, with the addition of saltpetre and sulphur.

No doubt these distinctions in favor of certain flags cannot fail to produce difficulties with the principal nations whose commerce will suffer thereby, and may be expected to render them impracticable, or to subject the United States to heavy reclamations.

The courts will certainly be bound by the treaty stipulations, and the remedy cannot be had in executive revocation. That must come in the usual way.

"Where goods are once clearly shown to be contraband, confiscation to the captor is the natural consequence."

The exception being in case of provisions, which are to be allowed premption.

The non-contraband part of the cargo and the vessel are to be released unless they belong to the owner of the contraband, or unless there be aggravating circumstances, such as false papers or false destination, or other fraud, in which case all is condemned.

Kent says, "This is now the established doctrine, but it is sometimes varied by treaty."

* 1 Kent 149.

The naval commander is however not chargeable with the decision as to the fate of ship or non-contraband cargo. His business is limited to ascertaining that there is contraband on board and to evidence as to absence of fraud in papers, destination or other respects, so that the Prize Court may be able to act.

The treaties of the United States generally confiscate contraband, leaving the vessel and remainder of cargo free; there are some exceptions to this, however.

By that with Prussia, in 1785, renewed in 1794 and 1828, contraband is not to be confiscated, but may be detained or used and paid for.

No provision is made in that with Spain, Russia, Sardinia, or Hayti; therefore the common law will apply.

In some cases it is specified "whether the owner of the contraband or not," as with Venezuela.

Slaves were held to be contraband of war in England in 1814.*

With respect to coal, France seems unwilling to admit it to the list of contraband. While at war with Mexico in 1864, she complained of our "refusing coal to the French fleet".

On May 16, 1864, Mr. Dayton informs Mr. Seward that M. Drouyn de Lhuys says that "France never has declared and never will declare coal contraband of war; that if the United States should do so, it would be a retrograde move, inasmuch as its traditional policy had always been in favor of neutrals and in limitation rather than in extension of the list of contraband. He hopes that we will not retrace our steps,

* Jacobsen's Sea Laws, p. 476.

but in this matter adhere to our past policy; that France has always gone with us, or we with her, on these questions of maritime law, and he does not think it for the interest of either country to part company; at least, that was the inference from his language. This is a question of deep interest to the French government—deeper, perhaps, than to us, she having a large navy and *little coal*, while Great Britain and the United States have an abundace of the latter article.

He said, further, that if the United States should declare coal contraband of war, it would place France in a false position in reference to our country. That she, France, holding coal not to be contraband, would be compelled to supply it to our enemies in time of war, and to the confederates, while denying it to us because we denied it to them. That they would dislike much to be placed in a position indicating such apparent want of neutrality, yet that it would be inevitable if coal was declared by us contraband of war".

The same complaint was repeated June 8th. The refusal was admitted by Mr. Seward, and justified June 27th, 1864. *

After perusing the writers above cited in relation to blockade and contraband, I find no one to compare with the Commentaries of Kent in comprehensive view, concisely yet clearly expressed.

* Diplomatic Correspondedce, 1865, Part 3, 759-765.

VISITATION AND SEARCH.

VISITATION AND SEARCH.

The need of appropriate and well defined terms is very apparent in the glance at the subject to which these terms refer. It might be said of them in the words of Ortolan, they were never "*redigees par des marins.*

Even in a treaty concluded after long years of fruitless effort in relation to a much vexed question, (with Great Britain, April 7th, 1862,) chiefly to be defined by these very phrases, is to be noted this censurable inacuracy.

In the first article, visit and search are used as equivalent terms. In the second and third sections search only is used; in the fourth section search and detention; in the remainder search only; and the process described in article six shows it to be a search in the ordinary sense of the word. In the instructions to commanders annexed to the treaty "search and detain" only occur.

In the additional article (February 17th, 1863) the treaty is described as agreeing that a "visit" may be made; and then, in the same article, it is spoken of

as the "right of search and detention." Afterwards the additional article proceeds to extend the "right of visit and detention".

It is plain that in these papers *visit* and *search* are considered as synonymous terms.

Vattel uses *visite*: "*Si l'on ne visite pas les vaisseaux neutres*". In French, *visite* has the ordinary signification of visit—to call to see a person—and also the peculiar sense of examining, as "a bishop visits his diocese"; but visitation would be more proper—still this is almost entirely exceptional. The French also use *visite* in Ordnance, as "*Visite des armes*,"—"Inspection of arms."

In all these cases there is but one purpose and one term. The purpose, too, is one of interior organization—a superior acting on an inferior—well defined by rule and practice and never questioned.

In all of which respects the naval object differs. There are several purposes, all external and relating to things international—equality of independent flags—as to which no definition is agreed on, but varying, and the subject of question and dispute, ending even in war:—

1st. Examination of papers to prove nationality only.

2d. Examination of papers to prove cargo and lawfulness of voyage.

3d. Examination of the ship in continuation of the same purpose, or really search.

The French word *visite* may mean any or all of these, even the greatest; while the English "visit" and "search" may extend no further that the least. Wheaton pronounces them equivalent.

The Spanish Admiral, Pareja, described exactly the meaning of *visitar*, and included only the examination of papers, and that in a limited sense, except in certain cases. *

Lord Aberdeen, in a letter to the United States Minister, December 20, 1841, distinguishes between "visit" and "search." He says:

"The right of *search* is not confined to the verification of the nationality of the vessel, but also extends to the objects of the voyage and the nature of the cargo. The sole purpose of the British cruisers is to ascertain whether the vessels they meet are really American." Hence it is inferred that *visit* is only to ascertain nationality. *Search* extends to objects of voyage and nature of cargo.

The conduct of the visit and search is provided for by treaty as follows:

France, 1800.—The examining ship shall remain out of gun-shot, and send boats on board, and may enter to the number of two or three men only, to whom the master shall exhibit his passport. He is not to be required to go on board the ship of war for any purpose. Art. 18.

Proof with respect to the cargo shall be certificates containing the particulars of the cargo, the place sailed from and where bound, so that the contraband shall be distinguished by the certificates, made by the officers of the place left. If missing, proofs of ownership may be supplied by the usage of nations. Art. 4.

No other papers to be required save the passport and certificates. Art. 17.

* Order of Blockade of Chili, 1865.

The captor shall receipt for papers retained. Hatches not to be opened, nor any of the packages, unless to be brought ashore in the presence of competent officers. Art. 20.

Netherlands, 1782.—Substantially like the treaty of 1800 with France. Neutral merchants must have sea-letters or passports showing "names, property, and burthen of vessel," etc. Also a general passport or particular passports or manifests specifying cargo, whence from, and destination. Art. 25.

Sweden, 1816.—About the same as the French treaty.

Prussia, 1785 and 1828.—The examination and sea-letters are as above. There being no contraband it omits the rest of the proceedings provided for by the French treaty.

Spain, 1795 and 1848.—About the same as the French.

Columbia, 1824.—It provides, as in the French treaty, with the addition, that if without passports and sea-letters, the vessel may be detained and adjudged legal prize unless the defect be supplied by equivalent testimony. Art. 18, 19.

Similar are our treaties with Central America, 1825; Mexico, 1831; Venezuela, 1836; Ecuador, 1839, and Hayti. Guatemala, 1849, is the same, save "that a boat with two or three men only," is to make the visit.

Brazil, 1828, and Chili, 1832, differ only in substituting "out of cannon shot," "the greatest distance compatible with making the visit, and send its smallest boat." Peru is the same, save "one of her small boats with no more men than necessary."

New Granada, 1846, says "out of cannon shot, unless in stress of weather." Bolivia has it "at a convenient distance."

The rule of search is nearly alike in all cases:

1st. The examiner is to remain out of cannon shot. New Granada adds, "unless in stress of weather" Brazil, Chili, Peru, Bolivia, substitute "the greatest distance compatible with making the visit." Bolivia has it "at a convenient distance."

2d. Send boats, but only two or three men must go on board. Guatemala, New Granada, Bolivia, Hayti, substitute, send a boat "with only two or three men." Brazil, Chili, Bolivia, say "send the smallest boat." Peru says, "one of her small boats with no more men than necessary."

3d. The master shall show his passport or sea-letter and certificates, showing name and character of vesssl, port left; where bound, particulars of cargo, so as to show if contraband be on board. No other papers are to be required, and the master is not required to leave the ship.

4th. Hatches are not to be opened, nor the packages of the cargo, unless in landing, and then in presence of competent officers. If any papers are retained by captor a receipt is to be given.

The treaties with Great Britain and Russia are silent as to the whole proceeding.

Holland, 1782, further guards her vessels by making the captors liable for damages to the owners, is case no contraband is found; Sweden likewise. Art. 13.

By the treaty with Venezuela, 1860, the master is not to be removed from his ship, nor the supercargo.

Thus the political course of our Government has bound the United States to the utmost restriction that neutral interests could ask for, in prosecuting the search for contraband, so far as France, Spain, Holland, Sweden and Prussia are concerned, and the American States. The most important interests are left to depend on the honesty of mere sets of papers, whose very signatures our officers are unacquaiuted with. Contraband may lie beneath every hatch, under the guise of "hardware" on the manifests and certificates, according to the common practice during the war of the Rebellion. But all examination of the fact by the captor is forbidden.

The silence of Russia in the whole matter is significant, she having been the great front of the Armed Neutrality, asking no more in regard to contraband, or the treatment of her traders, than the common law gives.

The silence of Great Britain we understand. She needs the widest latitude and must concede it.

It is only necessary to glance at some of the cases before the United States District Court for New York to perceive how little defence we could have made against contraband, if our treaties with some neutrals had been the law instead of the common law.

The preceding terms of treaties and the decisions of United States courts interpreting the common law, will indicate the course which is requisite to flags of different nations. It were to be wished that uniformity of detail could be obtained, if not of principle, which is however not to be expected where the latter does in fact only represent interests, and these not likely to be similar.

Examination will show how little efficacious a treaty is likely to be, when diverging from the common law.

As to place of capture, the United States courts decide that contraband designed for an enemy may be captured at once after the departure, the offence being then complete.

"Their neutral national character (of goods) must be proved by the invoices and bills of lading and by all certificates, letters or documents relating to the goods, etc." *

ADMIRAL PAREJA'S ORDER.

The instructions issued by the Commander in Chief of the Spanish squadron in the Pacific to the commanders of all the vessels thereof during the war between Spain and Chili, in 1865, are a model for clearness and precision. The Admiral being also the Minister Plenipotentiary of Her Catholic Majesty, these instructions have a political as well as a naval authority. While they are "intended to do as much damage as possible to the commercial interests of Chili," the Admiral remarks that "every privilege is conceded to neutrals that is consistent with the object in view, and to such an extent that the undersigned cannot but consider them as the most indulgent which any belligerent has ever sanctioned in such cases."

The following is the text of the order:

"The Republic of Chili, being declared at war with Spain, is entirely responsible for the consequences that ensue therefrom. In order, therefore, that you may pursue such a course, with the vessel under your

* Parsons, p. 115.

command, as may be best adapted to carry on hostilities against Chili, and at the same time avoid all injury to neutral nations that maintain trade with that Republic, I will give the directions which you are to observe as most effective for attaining both purposes.

1st. You are authorized from this date to chase and capture any Chilian vessel, whether of war or engaged in privateering or commerce, and found at sea or in a Chilian port.

2d. You are likewise authorized to take possession of the cargoes of Chilian merchant vessels, whenever said cargoes do not belong to a neutral; and you may do so, even if neutral property, when composed of articles contraband of war. In case the neutral cargo, found in a Chilian vessel, should be made up of contraband articles and of others not contraband, you are only to mako prize of the contraband portion of the cargo, leaving the remainder free, even though it may belong to the same owner as the illegal part.

3d. You will also detain and make prize of any neutral vessel which is carrying to or from the enemy, official dispatches, or soldiers, or sailors, or naval stores for the vessels of the enemy.

4th. You have also authority to make prize of all cargoes of neutral vessels and which are composed of contraband, but the vessel is to remain free after taking the illegal cargo out of her. If a part of the cargo should be lawful, it is also free, even when it belongs to Chilian citizens; for a free vessel also makes lawful merchandise free.

5th. You are also authorized to make prize of those vessels whose neutrality may not seem to be established by proper documents.

6th. You will also detain any neutral vessel which by the construction of her hull, or interior fitting, or other special circumstances, leaves no doubt of having been built for war, though with the appearance of a merchant vessel, and the cargo not contraband; since it might happen that such a vessel had been built by private establishments for the enemy, or had been sent from a neutral port to be sold to the same; for in both cases such a vessel should be classed among contraband of war, as an unquestionable means for that purpose.

7th. Vessels will be considered suspicious and subjected to examination, which carry double papers, or that seem to be false; also those which have not the papers required by the regulations of their own flag, and such as do not heave to when required to do so by a vessel of this blockading squadron, or which resist an examination of parts of the vessel where it is suspected that there is contraband. These suspected vessels will be treated as enemies if they cannot in some way remove the suspicions which attach to them. You will use the greatest care in the examination of ships' papers, as it is of the utmost importance, because these papers constitute the foundation on which must rest the validity or invalidity of the capture.

8th. Neutral merchant vessels sailing under convoy of a neutral ship of war, are not to be examined; the written declaration of the commander of the convoy being sufficient, that they do not belong to the enemy, nor carry contraband of war. If notwithstanding that declaration you should believe that the good faith of that officer has been imposed on, you

will make it known to him, in order that he alone may examine the suspected vessels.

9th. In case of meeting a privateer under the Chilian flag, you will capture and treat her as any other merchant vessel of the enemy; but if on examining her papers it should appear that she has not those which are required to authorize her acting as a privateer, then she is to be considered as a pirate. These papers must be: 1st.—Commission as Privateer, issued on her account by the Government of her country, in which must be stated the time and places where she is empowered to act against the enemy. 2d.—All the evidence necessary to establish nationality, besides which the majority of the crew must be subjects of the nation to which the privateer belongs.

10th. You will not disturb the fisheries on the enemy's coast, even within territorial limits, that is, within the extreme range of the cannon of this squadron, supposing a shot to be fired from low water mark of the coast line; but care must be taken that this concession does not give rise to abuses which may prejudice the blockade, or operations that may be undertaken.

11th. In order that a blockade may be effective, and therefore respected, it is indispensable that it should be maintained by a force sufficient to render it absolutely dangerous to attempt entering the blockaded port or ports. Hence, the absolute necessity that the vessel under your command should preserve a proper position for rendering the blockade effective, unless prevented by a really superior force; for it is to be remembered that it is lawful to violate a blockade whenever it ceases to be effective.

12th. It is a violation of blockade to attempt to enter or to leave a blockaded port; but there are cases wherein the latter may be allowed, such as the departure of a neutral vessel in ballast or with cargo taken on board before the blockade or within the term prescribed by the commander of this squadron. Wherefore you will not capture neutral vessels so circumstanced.

13th. A neutral vessel that is bound for a blockaded port is not obliged to know of the existence of a blockade until notified thereof; and this notification must be endorsed on the roll or other paper which a vessel is required to carry. Wherefore when a vessel approaches the port which you are blockading, without being informed of it, you will cause the officer who boards her to inscribe a notification on her roll, leaving the vessel to steer afterwards for such port as may be preferred, but not to that which is blockaded, nor to any other of Chili.

The Captain of the vessel thus notified of the blockade will give a receipt therefor, in which must be stated the date and the place or the astronomical position where he gives it.

The vessel which is thus notified of the blockade must not be examined.

If once a notification is endorsed and the same vessel shall attempt to pass or be found within the limits of the blockade, or being within shall attempt to enter the blockaded port or communicate with the enemy's coast, you will make prize of her with all her cargo.

From which it follows that when the existence of

the blockade is once known to neutral vessels, you must capture any of them which attempt to violate it.

14th. Chili having been notified of the declaration of war, you are to capture all vessels of that Republic, whether of war or commerce, with all the enemy's property which may be found on board of them, even when they are outside the line of blockade and have no intention of violating it.

The portion of their cargoes which may be neutral is free, unless it be contraband of war.

15th. If from stress of weather, want of provisions, etc., a neutral vessel should desire to enter a blockaded port, you will allow her to do so, on exhibiting evidence of the necessity that she is under.

But if the vessel should carry contraband of war, you will cause it to be deposited in your own vessel and in the others on blockade, or if the Master prefers, let him bind himself to retain it on board until his departure. In which case be careful that this document is as explicit as possible.

16th. As it follows from the preceding that you will have to exercise the right of examination, I proceed to direct you how it shall be done, in order that no unpleasant difficulties may arise therefrom; and although the law of war permits its exercise in all places, I enjoin you explicitly only to do so in such places and circumstances as give reason to believe that its exercise will result in the confiscation of the vessel. You will proceed as follows:

1st.—On deciding to board and examine a merchant vessel, you will hoist the national ensign and

fire an unshotted gun, on which intimation the merchant vessel should heave-to and await the boarding with her colors hoisted. If she does not, you will manœuvre so as to compel her to do so.

2d—If the merchant vessel heaves-to at once and shows her flag, you will keep at such distance from her as you may deem convenient, according to the state of the wind and sea, or other circumstances not possible to foresee, and keeping in view always the safety of the boat sent to board. Some authors on Maritime rights, say that the boarding vessel should keep out of cannon shot of the vessel boarded; and the same is directed by the instructions of the French Minister of Marine, in 1854, to Admirals and Captains of ships of war. But this is opposed, and with reason, by other writers, such as Ortolan and Negrin. Wherefore under such circumstances the best guide is the practical judgement of the commander of the boarding vessel; and advising you to act in this respect with the greatest prudence, so as to unite moderation with a readiness to afford needful assistance to the boarding boat, you will manœuver conformably to what has already been said at the commencement of this paragraph,—since there is also the fact that the principle there asserted is also adopted for cases like that now under consideration, in the treaty of May 16th, 1832, between the United States and Chili, and also it is believed in other subsequent stipulations.

3d.—As soon as the merchant vessel heaves-to, you will send a small boat with an officer, who accompanied by only two or three men will go on board and proceed to verify the nationality, the class and the cargo of the vessel, and whether engaged or not in

illegal commerce; that is carrying any contraband of war. For which purpose the officer will require the captain to exhibit his sea letter or passport, (*patentes de mar*) list of crew and bill of health from port of departure, by means of which he can ascertain the nationality of the vessel and the lawfulness of her voyage.

If from this scrutiny it shall appear that the vessel visited is neutral, and is also bound to a neutral port, the examination is finished, and the officer is to leave the vessel at liberty, without enquiry into the nature of her cargo, endorsing her papers accordingly.

If the vessel boarded should be bound to a port of the enemy, the officer, besides examining the papers already named, must demand of the captain those which prove the character of his cargo, and if it appears from these that there is no contraband on board the examination is terminated and the vessel at liberty, endorsed as already indicated. But if the papers show that there is contraband on board you will take possession of the vessel; taking care, however, even in the latter case, that the hatches are not to be opened, nor closets, nor chests, in order to see if there be other suspicious papers or merchandize.

4th.—It is to be well understood that the directions in the paragraphs of this article are not to make any change whatever in what has been enjoined on you previously in regard to the blockade you maintain.

5th.—You are to bear in mind that if by unforseen causes you are drawn off the blockade and get on the coast of a neutral, the right of search ceases in the territorial waters of that country; and you have already been apprised in Art. 10 that the limit of these

waters is defined by the extreme range of the cannon of the ships of this squadron; and within this you cannot exercise the right of search.

6th.—I must here repeat the caution given to you previously in the last paragraph of Art. 7, that the examination of a ship's papers is of the utmost importance, since they constitute the foundation on which depends the validity or invalidity of the capture.

17th. If in consequence of this examination the vessel becomes a prize, the officer will take possession of all her papers, giving a receipt therefor to the captain, and will cause him to make sail so as to approach the boarding vessel, which will then return to her station. As soon as the vessel that has been examined is near enough, you will send on board a prize crew and direct the officer in whose charge she is to remain, to take an inventory of everything on board, sealing the hatches as soon as this has been done.

18th. You will keep on board the prize, whether merchant or privateer, those who form the crew; but women and children, and generally all that do not belong to the Chilian army or navy, and are not connected with either, may be landed at the first port where the vessel touches after capture.

The prize being one of war you will observe the exception already stated; but if you find it convenient may tranship a part of the crew until arrival at the port which you deem preferable; exacting from them, however, an explicit promise, in writing, that they will not enter any other of the enemy's ships of war or privateers.

19th. That you may have no doubt as to the arti-

cles which are considered contraband of war, besides the vessels described in Art. 6, the following enumeration is given:

Cannon, mortars, muskets and all other kinds of arms, as well as all projectiles, gun-carriages, percussion and friction primers, caps, matches, powder, saltpetre, sulphur, *prendas de* military clothing, harnesses, saddles and bridles, field tents, and in general all instruments or objects manufactured for war.

20th. You will not object to the entrance and departure of neutral ships of war to or from the port which you blockade.

With a view to the exact understanding of Art. 12 of these instructions, you will bear in mind that the concession made therein to neutral vessels of leaving Chilian ports with cargoes taken on board before the blockade, is with the intention that the departure shall take place within the time fixed by the General of this squadron, and not after this time has expired."

(signed) JOSE MANUEL PAREJA.

The term "International Law" would seem to imply the existence of a regular code, with no more of uncertainty than belongs to any system of national law. Some experience would lead almost to the contrary conclusion, that there was no system at all. The fact lies between; all nations recognize and practice certain leading principles; such as the right to blockade, and to make prize of violators thereof; prohibition and confiscation of contraband, etc. But they vary widely in the application—in determining

what constitutes blockade, and what is contraband. These variations are indicated by the decisions of their Prize Courts.

After all, the question resolves itself into ascertaining how far a belligerent may trench on the interests of a neutral, and how far a neutral may go without trenching on belligerent rights. In general, the latter dominated until the appearance of a power—the United States—whose interests lay almost invariably with the neutral. Then the latter preponderated, and the Convention of Paris of 1856 witnessed even Great Britain yielding to the dicta of the Armed Neutrality of 1780.

DUTIES OF NAVAL COMMANDERS

ON FOREIGN STATIONS.

DUTIES OF

NAVAL COMMANDERS

ON FOREIGN STATIONS.

In general, these are seldom defined in peaceable times. The commanding officer of a squadron seldom has any further orders from the Navy Department than to relieve some other in the command, leaving him to his experience and responsibility as to the course he may pursue in regard to foreign flags. Occasions may and do arise where special instructions are sent; but these are often far less important than those which constitute the general policy of the United States towards another flag, as developed by the commander of the naval force.

Of course it is evident that no reference is here intended to the manner in which he shall conduct the internal affairs of the squadron, as they are minutely regulated by the Book of Instructions.

It may be assumed that the ordinary purpose of maintaining a squadron on the coast of another power is primarily to protect the interests of American citizens there being, which in the main are commercial, though not always so.

These interests are, it is true, assigned to the United States Minister sent to each country and under him to the Consuls resident at different ports. With these officials the naval commander is to keep himself in proper communication, and to render such assistance as may be needed.*

But in so doing he is to act "on his own responsibility," and "as he may judge to be expedient and proper." He is therefore independent in his action, and in nowise subordinate to the Minister or Consuls. Which is a wise and proper precaution against a rash or injudicious resort to force, entirely in accord with the policy of the United States and that provision of the Constitution which limits the war-making power to Congress.

In order that the naval commander may properly discharge the duties thus confided to him, he should acquaint himself with all that concerns foreign intercourse, whether defined by international law or treaty, so that he may best sustain American interests.

It is to be remarked that the instructions from the Navy Department confer no capacity to communicate diplomatically with a foreign government, or any of its civil functionaries, and therefore his action will be disregarded by said government if it take this form, unless indeed the necessity of the case render it unavoidable, such for instance as the absence of an authorized diplomatic officer.

Such occurred with me in 1858, when commanding the *Plymouth* on the coast of Mexico. Revolution was going on and the parties were nearly balanced. Juarez held the sea coast, his opponent the capital.

* Naval Regulations, 310.

Our Minister was accredited to the latter before the revolution, and of course remained in the capital without relations with Juarez. The Consul at Tampico called on me to take action against General Garcia, who was acting most oppressively upon American citizens, levying contributions, and if not paid seizing merchants or their property. I went to Tampico, obtained but partial redress, returned to Vera Cruz and saw Juarez, from whom after a personal interview I received the fullest reparation. In this case it will be seen that no diplomatic action was possible, and it remained for a naval commander to act.

If therefore it should become necessary for him to address the foreign government,he must do it generally through the diplomatic functionaries of his country.

Of course there is no restriction in regard to intercourse with vessels of foreign powers under any flag. Nor properly in addressing the envoy of another power who may be accredited to the country where he is cruising, though such has been claimed in an instance wherein the conduct of a Consular officer had been highly improper on board a United States ship of war. Still the Consul-General admitted it and entered into correspondence until the difficulty was adjusted.

When President Prado took refuge on board the *Nyack*, the British Vice-Consul at Callao came on board and asked Captain Pendergrast for a certificate that he was on board, the purpose being to release the mail steamer which was detained on suspicion, by the revolutionary authorities. His behavior was, besides, highly indecent. I thereon addressed the British Charge d'Affaires as the superior of the Vice-Consul, and required reparation. After some shuffling, it was

given in the shape of a reprimand to the Consul and an apology from him. My action was approved by the Navy Department, who wrote to the State Department. The Charge d'Affaires alleged that it was not regular to correspond except through the United States Minister, but only at the conclusion.

The duties of the Consul are never diplomatic* but are simply supervisory in their character in regard to the business (commercial) of his flag at the port where he may be placed.† The naval commander therefore will be careful also not to take on himself any of the duties of the Consul, while such there is, though cases frequently arise, particularly in regard to seamen, where he might seem called on to deal with the authorities of a port. Still he can often sustain the action of the Consul and also prevent merchant crews or officers from committing irregularities.

When there is no diplomatic representative at the seat of Government, a naval commander will be justified by necessity in addressing the Government upon any matter of interest to his flag; or, when the relation is suspended, the same may be proper, though in such case the Minister should be kept informed of the proceedings.

In the case of the U. S. Consul at Tombez, who was arrested by the authorities and sent to Payta, I found that our Minister had cognizance of the case; but the revolutionary Government not being yet recognized by our Government, he was not in diplomatic relations, and informed the Consul that he would right him as soon as he was. This appearing likely

* He is prohibited therefrom, 30.

† Duties defined. Consul's Manual 24.

in a short time, I did not feel authorized to interpose, but hearing that in their hot haste the Consular archives were left unguarded, I wrote to the Sub-Prefect of Parta, in whose custody was the Consul, and apprised him that his exposure of the archives was not justified. The Sub-Prefect replied that he was not authorized to take cognizance of the subject, but referred it to his superior, the Prefect at Piura.

Consuls are subject (in civilized countries) to the tribunals of the country, in civil as well as criminal matters, and in trade are on the same footing as other merchants.*

But the records and papers of the consulate are inviolable. The foreign Government has the right to refuse receiving a Consul or to withdraw his exequatur.

Such offences as desertion not unfrequently bring the naval commander into communication with the port authorities; and it is the common practice to reclaim them without the agency of the Consul, which may however be invoked if desired.

There is never any difficulty in such matters where provision is made by treaty in obtaining deserters or in surrendering them; nor generally when there is no treaty to that effect. The single grave exception is with the English. We have no treaty with them; yet desertions are most frequent to and from British vessels. Many naval commanders are in the habit by tacit agreement of making delivery; but this should be avoided, because important considerations are involved in the failure to agree, which have become national. And there is really no difficulty in

* U. S. Consul's Manual, 13.

agreeing, save in the pride and interests of England.

Certainly it is a violation of principle to harbor deserters, even when not restrained by treaty; but the proper course is to set them ashore, though refusing delivery.

In matters of etiquette, ceremonies, etc., so far as naval officers are concerned, there is no difficulty, because all naval powers agree nearly in the recognition and reception of naval officers, and military. In our own service it is also defined by regulation. The French regulations are in one respect better than our own, inasmuch as they will receive a foreign officer acccording to his own regulations.

National days are also respected.

In one instance, however, a difficulty did arise from a refusal on my part to rocognize a Peruvian Admiral, (Tucker) because he was still a citizen of the United States, chargeable with having been a rebel and a traitor, and still punishable.

This refusal drew a letter from the Secretary of Foreign Relations to the United States Minister, to which I replied, taking the ground that being still a debtor to our law he could not take another allegiance until this obligation was released by the payment of a penalty, or by pardon of the President; and I cited the President's views in his annual message, in which, speaking of expatriation, he affirmed it was always possible except when the party had been convicted of crime or was charged with it. The Peruvian Government adhered, however, and the question was referred to the United States Government. The Navy Department sustained me, but the State Department did not, and induced the President to order that

Tucker was to be considered as a Peruvian. Preceding the receipt of this Tucker resigned, and our flag happily escaped the indignity.

An act of hostility, by a neutral ship of war, is an act of war; and the officer who directs it, is liable, not to the injured parties, but to his own government.

ADDENDA.

BY THE EDITOR.

ADDENDA.

President Lincoln's Proclamation of Blockade has been repeatedly discussed in the foregoing pages, in respect to its internal effect. But the external effect of that proclamation should also be kept in mind. That proclamation had the effect to constitute both the blockaders and the blockaded, belligerents, and all other parties neutrals, and clothed each with all the rights and duties of belligerents and neutrals respectively. By it, the United States gained what they could not have gained by a mere municipal closing of the southern ports, the right to stop and search vessels on every part of the high seas, to divert them, if necessary, from their original destination, and to confiscate their cargoes when contraband. It is well known to the present editor that President Lincoln and his astute secretary of state acted with reference to these considerations, in issuing the proclamation of blockade, as the British Government did in issuing their much-misrepresented Proclamation of Neutrality.

Since the War of the Southern Rebellion closed in 1865, the peace of Europe has been disturbed by three important wars, and a fourth war in that

quarter seems now imminent. In 1866, Italy and Prussia declared war against Anstria, the result of which was that Austria renounced her sovereignty over the Lombardo-Venetian Kingdom, (which was incorporated with the Kingdom of Italy,) and withdrew with all her German Provinces from the Germanic Confederation; while Prussia with the remaining twenty-six German States organized the German Empire, which seems now to have crossed the threshold of a great career.

In 1870, since the author of this work passed to his rest, the armies of Italy occupied the Papal States, and the Roman Provinces, in spite of the most solemn protestations of the Holy Father, were annexed to the Kingdom of Italy.

In the same year (1870) France declared war against Prussia, which culminated with the capitulation of Napoleon at Sedan and the Treaty of Frank fort, by which France ceded the whole of Alsace and a large part of Lorraine to the German Empire.

These wars were attended with great desolation, especially in Paris, where the atrocities of the Communists were all but equalled by the atrocities of the Anti-Communists. Nevertheless the practice of war *inter gentes* has been somewhat ameliorated, and all the states of Europe have acceeded to two great International Acts, the object of which is to reconcile in a measure the necessities of war with the suggestions of humanity, viz:— the Convention of Geneva, and the Declaration of St. Petersburg, of 1868.

In the first of the three wars above mentioned,

that of 1866, between Austria on the one hand, and Prussia and Italy on the other, a new principle was introduced, viz: that enemy merchandise and enemy merchant ships should be exempted from capture on the High Seas, on condition that the enemy observed reciprocity. A decree to that effect was issued by Austria on May 13th, 1866, which was affirmatively responded to by Prussia on May 19th, 1866, and by Italy on June 20th, 1866. On the breaking out of hostilities between the Confederation of North Germany and the French Empire in 1870, the King of Prussia published at Berlin a decree, July 16th, 1870, exempting all enemy merchant vessels from capture without any condition of reciprocity; but as France continued to exercise her customary right of belligerent capture against enemy merchant vessels, the Emperor of Germany annulled the Berlin Decree by an Imperial Ordinance dated from Versailles on January 19th, 1871.

Commenting on these measures, Sir Travers Twiss, in the Introduction to the second edition of his "Law of Nations," says, "they testify to the general desire of the European Governments to mitigate the practice of warfare, where their own safety does not require the enforcement of its more severe rules. In the wars of 1866 it was evidently for the convenience of Austria not to have to send an armed fleet into the Baltic to protect her commerce, and Prussia was reciprocally benefited by not having to send an armed fleet into the Mediterranean, whereas in the war of 1870 it was more for the advantage of Prussia than of France that enemy merchandise and enemy merchant ships should be exempt from belligerent capture, and accordingly France did not respond to the advances of Prussia."

In 1874, Prince Gortschakoff projected an elaborate programme of seventy-one articles covering the whole ground of the usages of war for consideration at the Conference of all the great powers of Europe, which met at Brussells. The programme failed signally in most particulars, but a renewal of it has been proposed and important results may yet spring from it.

Professor Amos says :—

"The principles ruling the conduct of maritime wars have been less subjected to modification than those with respect to wars on land. The tendency hitherto has been to the detriment of the property of non-combatants,—that is of the mercantile marine. There is a great tendency now to modify that principle as far as possible. The United States and, latterly, independent English thinkers, such as the late Mr. Cobden, have lost no opportunity of expressing themselves strongly in favor of the limitation of maritime war to the property of the State, and to the persons of actual combatants. This principle, no doubt, presses with very unequal force upon states the warlike strength of which must consist in their navy rather than in their army. Their assertion is, that the destruction of their enemies' commerce is the only instrument in their hands for crippling their enemy. It cannot be doubted, however,—and on this very ground,—that the introduction of a rule which shall protect the property and persons of non-combatants in maritime wars, would go a great way to the annihilation of war altogether. There are many appearances presented by the negotiations which have accompanied recent treaties, such as eminently that of Paris of 1856, which seem to make it likely that this result of the limitation of

of the area of war at sea as well as by land will, in no long time, become an established rule." *

Trained to war, and the inventor of several of its deadliest instruments, Admiral Dahlgren, nevertheless, looked forward, with hope, to the realization of these and other, even greater, ameliorations of it hardships. To stimulate inquiry on these subjects, especially among his own glorious profession; to concentrate opinion and to combine men and nations in efforts for the improvement of international law, and the mitigation of the hardships of war, was a principal aim of the foregoing fragments of a work.

The subjects embraced within the scope of international law, were often the topics of quarter-deck colloquies between the admiral and the present editor during the long and wearisome months of our blockade service; and no man ever felt more deeply the uncertainties of this department of jurisprudence, or yearned more ardently for their settlement on the basis of justice and equity.

Referring to some of these uncertainties, in an able address at Manchester, England, before the National Association for the Promotion of Social Science, David Dudley Field said:

"Take the case of recapture at sea. America has one rule, England has another, whilst France, Spain, Portugal, Holland, Denmark, and Sweden have each a rule different from either, and different from each other. * * * * Take the question respecting the effect of a declaration of war upon the persons and property of an enemy found in the country at the time. How important that it should be settled be-

* Amos' Lectures p 75.

forehand by a uniform rule. And yet the practice of nations is various, more various, even, than the nations themselves; for in the same nation the practice has varied with the interest or caprice of rulers.

You had a controversy with the Great Frederick about the confiscation of the Silesian loan. The seizure of French ships in your ports, upon the rupture of the peace of Amiens, and the detention by Napoleon of English subjects found in France, produced an immence amount of suffering, which might have been in great part avoided by the establishment beforehand of a proper rule. What articles are contraband of war ought to be settled and everywhere known. But you do not agree with us respecting them; you do not agree with most of the continental nations. There must, however, be some rule founded upon just principles, to which intelligent and impartial publicists and statesmen would give their assent, could they but approach the subject in time of peace, undisturbed by passions and enmeties. The vexed questions respecting the right of neutrals to send goods by the ships of a belligerent, or to carry the goods of a belligerent in their own neutral ships —questions illustrated by the formulas, 'free ships, free goods,' and 'enemies' ships, enemies' goods'— are matters in which the trade of the whole civilized world is interested, and yet how unsettled! The obligations of a true neutrality, what are they? Do they permit the supply to a belligerent of ships and munitions of war? Do they require a neutral to prevent the fitting out and sailing of ships? Do they require a neutral to disarm and arrest bands of professed travellers or emigrants who are seeking to pass the border, with the real intent of making a hostile

incursion? Take the case of the Alabama. * * * The security of property and the peace of nations require that there should be none such hereafter.

Then there are grave questions respecting the doctrines of expatriation and allegiance, which have given rise to some misunderstanding already, and which may give rise to greater misunderstanding hereafter. * * * * * * *

There is the question of the right of search, which has already given rise to angry disputes, not yet quite settled; there is the question of the right of nations inhabiting the upper banks of rivers or the shores of inland seas to an outlet to the ocean; both of them greatly needing a just and ready settlement.

What might not be done for the prevention or mitigation of the greatest scourge of the human race, war? First, by way of prevention. Let us suppose that the Governments of England and America were to commission their wisest men to confer together and discuss a treaty, for the express purpose of preventing war between them. Can there be a doubt, that if these representatives should come together, animated solely by a love of justice and peace, they would agree upon a series of mutual stipulations, which, without compromising the dignity or independence of either country, would make it extremely difficult to fall into open war without putting one party or the other so completely in the wrong as to subject it to dishonor? Whatever those stipulations might be, whether providing for an arbitration before an appeal to arms, or for some other means of adjustment, the same stipulations which had been inserted in a treaty between our two countries could be inserted also in

treaties between them and others. Is it too much to hope that by this means the time may come when it will be held impious for a nation to rush into war without first resorting to remonstrance, negotiation, and offer of meditation? Supposing, however, war to become inevitable, and two nation at last engaging in actual hostilities, how much may be done in favor of humanity and civilization, by adding to the rules which the usages of nations have established for mitigating the ferocity and distress of war. Could not private war, and war upon private property, be for ever abolished? Could not more be done in the same direction as that taken by the late conference at Geneva, which produced such excellent effect during the last contest in Germany, in exempting surgeons and nurses from capture? Could not the sack of a captured city, or the leading to indiscriminate fire and slaughter, even of women and children—the aim should be, while not diminishing the efficiency of armies against each other, to ward off their blows as much as possible from all others than the actual combatants.

How can these changes so desirable in themselves, be effected? I answer, by the adopton of an international code. Every consideration which serves to show the practicability and expediency of reducing to a code the laws of a single nation, applies with equal force to a code of those international rules which govern the intercourse of nations."

It is worthy of note, that while Hautefeuille excuses the Milan and Berlin Decrees of Napoleon, on the ground that they were retaliatory to the British Orders in Council, as shown by Admiral Dahl-

gren in the preceding pages; Professor Amos, in his Lectures on International Law, printed since the Admiral's death, excuses the British Orders in Council on the ground that they were retaliatory to Napoleon's Milan and Berlin Decrees! Neither the judicial-minded Englishman nor the brilliant but erratic Frenchman pretends to justify the course then taken by either belligerent. No belligerent would now think of imitating those orders or those decrees.

BLOCKADES OF HISTORY.

It appears by the Black Book of the Admiralty that, as early as the twelfth century, it was the custom of belligerent cruisers to stop all neutral vessels at sea, examine their papers, and seize and confiscate all goods belonging to enemies.* This was before the introduction of cannon, which were first used by the Venetians against the Genoese in 1370, and which effected as great a revolution in naval warfare as the application of the magnetic needle, or the steam engine.

Instances of this practice abound in history, but they have little interest except for the antiquarian. The most important of the early negociations on this subject were those between Henry the Eighth of England and Charles the Fifth of Germany.†

Down to the fifteenth century, the navigation of Europe was confined chiefly to the Baltic and Mediterranean Seas, and was little more than the coasting trade of our times. And it was not until the seventeenth century that what we know as a blockade

*Twiss Black Book of the Admiralty, vol. I, p. 29.

†Froude's History of England, vol. IV, pp. 336, 369.

was used as an operation of war. It was the practice of belligerents to interdict all trade with their enemies, either by their own subjects or by neutrals; and such had been the practice of the earlier nations —Greeks, Romans, Carthaginians, etc.

Blockade proper is of Dutch origin, the first commercial blockade having been instituted on the twenty-sixth of, June, 1630, by an ordinance of the States-General of the United Provinces. This ordinance sealed up all the ports of Flanders, then held by Spain, and declared that all neutral vessels, found coming out of, or entering, the enemy's ports in Flanders, or so near to them as to show a clear intent to enter them, should be confiscated, together with their cargoes, by the Dutch Courts of Admiralty.

The reason given is that "their High Mightineses keep the said ports continually blockaded by their vessels of war, at a great cost to the state, in order to hinder all transport to, and commerce with, the enemy, and because those ports and places are reputed to beseiged, which has been from all time an ancient usage, after the example of all kings, princes, powers, and other republics, which have exercised the same right on similar occasions."

The damaging effects of this blockade on Flemish commerce more than justified the Dutch lawyers who advised and projected it. Antwerp has never recovered from the paralysis with which this blockade struck her trade.

In the fifteenth and sixteenth centuries, Antwerp was the emporium of Europe, and excited by her opulence the admiration of other nations. But the Duke of Parma having wrested Antwerp from the Dutch and restored her to Spain, the Dutch

blockaded the Scheldt, and well nigh ruined the city of which they had previously been so justly proud. It was at the expense of Antwerp's commerce that Amsterdam rose to power.

Similar, at a later day, was the fate of Rochelle, whose harbor's mouth Cardinal Richelieu closed. Various other ports might be named, whose commerce has suffered permanent blight from a rigorous blockade.

Seeing how terribly effective a measure this blockade of Flanders proved, the Dutch, in 1652, devised another measure more daring, more extensive and (if submitted to) more effective still,—that of Paper Blockade. They proudly boasted of having established a blockade of all the British dominions in Europe, Asia, Africa and America! This cost nothing but the paper for the proclamation, and it was of no greater value than the same paper.

In like manner, in 1663, the Spaniards pretended to blockade all the ports of Portugal and her colonial dependencies.

Following these bad examples, England proclaimed a blockade of all the ports of Spain and her dependencies.

But of all the blockades of history, none, save the Federal blockade of the Southern Confederacy, can compare in magnitude and effectiveness with that by which Great Britain shut up all the ports and river and harbor mouths of the great Napoleon's empire, and of the nations allied therewith, including Italy, Spain, Portugal, Holland, Belgium, and several states of the present German Empire.

The vast results achieved by this British blockade of the Continent were as poorly appreciated by the

great body of the British people as were the results of our Southern blockade by the people of America. But Napoleon did not fail to appreciate, and bitterly deplore them.

In discussing the causes of the naval supremacy which England maintained, especially in the Mediterranean, from the battle of the Nile to the banishment of Napoleon to St. Helena, an able writer says: "The more the question is examined, the clearer will it become that our English navy was superior to all other navies of the world combined, not so much on account of superior numbers or inherent natural advantages, as for the very simple reason, that the genius of our commanders secured for us that constant practice and familiarity with the sea, without which the largest fleet and best manned navies are but useless toys.

If we take almost any year of the war, and reckon up the ships of the French navy and their allies then at war with us, we shall find that they far surpass our navy in total numbers of men and ships, and in size of guns. The comparison is not difficult to make on a limited scale, if we take from a naval history the numbers and force of our own squadrons, and compare them with the numbers and force of the squadrons they were employed to blockade or observe.

How, then, was the English command of the sea preserved? Simply by blockading every great port and arsenal, and preventing the exercise and concentration at sea of the separate squadrons. The blockading squadron would be often of necessity inferior in numerical force to the squadron it block-

aded. But it made up for its numerical defencies by higher discipline and more constant practice."

The same writer then proceeds to describe the daily life of the blockaders of France. Add the element of steam, and the picture will answer for the blockaders of Charleston, or Mobile :—

"The problem was to watch the harbor-mouth by day and night so narrowly that no ship could get in or out unchallenged; to keep under weigh for months at a time without letting go an anchor; in 'close-reefed-topsail-gales' of many weeks duration never to be blown off shore out of sight, nor driven on shore; never to loose spars and get disabled so as to be wrecked or captured by the enemies' forts or ships; to get supplies of stores and food, of wood and water, which could only be obtained by each ship running in turn to some distant point. No easy matter this when steam was unknown, and when the failure of a rope or of a spar might cripple or loose the best ship in the squadron. Nor were the ordinary duties of the blockading ship less arduous. Take, for instance, the supply of food and water. There were in those days no iron tanks neatly fitted and never requiring to be moved at sea, to hold the water and the provisions. The casks full of water and of salt junk and biscuits, (often years old and hardly fit for food) were necessarily kept securely ranged, and fastened deep in the hold below the empty casks. The 'empties' as a rule, could not be taken to pieces and made into compact bundles, for they might be wanted any day to be filled up and used again. All must be hoisted out of the hold, perhaps in a heavy seaway, at least once a week, and secured from rolling whilst the weeks' supply of full casks was drawn up and

lashed to the bulwarks for use. Nothing but the strictest care, unceasing vigilance, and constant practice, could make this possible with crews often recruited from the dregs of the population, and requiring an iron rule to enforce discipline. Again, to fight the guns effectively, in a brisk breeze, required a combination of strength and dexterity, of quickness and coolness, which only long practice at sea could give. All this the sailors of Howe and Rodney, and still more, those of Nelson and Collingwood, learnt to perfection; and the result was that they were able to shut up the squadrons of the enemy in separate harbors and to deny them that practice, at sea, without which the harbor-trained sailors, however brave or well taught in theory, were no match for the ocean-bred seamen who had been exercised in many long winters of blockading.

The dispatches of Napoleon contain constant evidence of how keenly he felt the necessary inferiority of his best equipped fleets as long as they were debarred from practice at sea. If his squadrons could but elude the blockade, if they could combine and get to sea, they could sweep the ocean or the channel; and the Indies, East or West, or the shores of Albion, would be open to his resistless armies. But the untiring vigilance of Nelson and his fellow-captains, never gave the brave sailors of the Continent the chance of obtaining the requisite practice, and many years before the great war ended, the navy of England was greatly superior in fighting power, though numerically inferior, to the combined navies of all the other naval powers of Europe." *

* London Quarterly Review, Oct. 1876.

RECENT DECISIONS.

Among the latest adjudications upon the questions of international maritime law, by the courts of the United States, the following are the most important:*

When a civil war is waged in a foreign nation one part of which separates itself from the old-established government, and erects itself into a distinct sovereignty, our courts must regard such newly established government as it is viewed by the legislative and executive departments of the government of the United States.

The principles of public law applicable to a state of war *inter gentes*, have, in general, in the absence of conflicting congressional legislation, been applied to legal questions arising out of the civil war of the rebellion.

In the war of the rebellion, the United States had belligerent as well as sovereign rights; they had, therefore, a right to prosecute the property of public enemies wherever found, and also a right to punish offences against their sovereignty.

The public property of a state, alienated, during a rebellion, by a usurping state government, for the purpose of carrying on war against the United States, may be reclaimed by a restored state government, organized in allegiance to the Union.

The acts of a *de facto* rebel government, which will be treated as valid, are confined, it seems, to such as are necessary to peace and good order among citizen, as acts sanctioning and protecting marriages

*See Brightley's Digest, Vol. 2, titles "Blockade" and "War."

and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, and providing remedies for injuries to person and estate.

A confiscation of the stock and dividends of a citizen of a loyal state, in a railroad company situate in an insurrectionary state, by the confederate government, is no bar to an action for such dividends, after the suppression of the rebellion.

During the civil war, the president, as commander-in-chief, had power to establish provisional courts for the administration of justice, in such portions of the insurgents' territory as were occupied by the federal forces.

A seizure of hostile property, and a complete possession of it, by the captor, for twenty-four hours, renders it *booty*, by the laws of war; and the title of the hostile owner is completely extinguished.

Neither an enemy, nor a neutral acting the part of an enemy, can demand restitution on the sole ground of capture in neutral waters.

To justify a neutral vessel in attempting to enter a blockaded port, she must be in such distress as to render her entry a matter of absolute and uncontrollable necessity.

The liability of a vessel to confiscation for a breach of blockade, ceases at the end of her return voyage.

The destinations of arms and munitions of war, and the use intended to be made thereof, at the time of seizure, must furnish a test of their statues as contraband or otherwise.

A neutral may carry dispatches from a minister-resident in his country, to the port of the belligerent in the country to which the minister belongs; if stopped on the high seas, for search, his only obligation is to act candidly, and deliver up the dispatches to the enemy of the minister's government.

But concealment and *mala fides* are taking part with the enemy, and subject the neutral to the penalties inflicted by the laws of nations.

A neutral may purchase an enemy's ship, in a neutral port, in time of war; but full proof must be given of the *bona fides* and validity of such purchase.

The act of landing a cargo, contraband of war, on the shore of a belligerent country, at a point not blockaded, is not an act of hostility against the other belligerent.

Commercial intercourse between a neutral and a belligerent, is lawful, so long as it is impartial, and not intended to violate any blockade, or to deal in goods contraband of war.

To the foregoing cases must be added that of the *Siren*, a prize captured by Admiral Dahlgren's own fleet on the morning of the occupation of Charleston; but no part of it was distributed among the captors, because the Court thought the army joint captors with the navy.

Under the British Prize Act,* in many cases of joint capture by the army and navy, the military arm shares jointly with the naval arm of the capturing force. As now interpreted, our Prize Act is, in this respect, less favorable to both army and navy. This

*Hazlitt and Roche's Maritime Warfare, p. 337.

interpretation was first suggested by Judge Lowell, after the case had been heard by him in the United States District Court at Boston. The learned Judge said:—

"All seizures of this character are made for the benefit of the government, in the first instance, and are under its control, and the captors have no vested rights until after a decree rendered, even if they have any before actual distribution made. This is a well-settled doctrine in prize law, and is necessary to the freedom of action of the government in its dealings with neutral nations. One consequence of this general rule is that grants of prize-money are to be construed strictly, and the burden is on the grantee to bring his case within the grant. Our prize act is the grant; for, though not exhaustive of the subject prize or no prize, it is exhaustive of the subject of distribution. The prize act relates to captures by commissioned vessels. It does not in terms deal with captures by the army and navy jointly, nor with several other classes of entirely legitimate takings."*

From this decision the captors appealed to the Supreme Court, where the case was argued in their behalf by Charles Levi Woodbury and Charles Cowley. But the Supreme Court confirmed the decision of Judge Lowell, and among other things said:—

"While the American colonies were a part of the British empire, the English maritime law, including the law of prize, was the maritime law of this country. From the close of the Revolution down to this time, it has continued to be our law, so far as it is adapted to the altered circumstances and condition of the country, and has not been modified by the proper

*Lowell's Decisions, p. 282.

national authorities. In our jurisprudence there are, strictly speaking, no droits of admiralty. The United States have succeded to the rights of the crown. No one can have any right or interest in any prize except by their grant or permission.

Four acts of Congress have been passed allowing captors to participate in the fruits of property captured. They are the act of 1799, that of 1800, that of 1862, and that of 1864.*

No provision is found in any of these statutes touching joint captures by the army and navy. They are wholly silent as to the military arm of the service. It results from this, according to the principles we have laid down, that such captures enure exclusively to the benefit of the United States." †

* 1 Statutes at Large, 715; 2 Id. 52; 12 Id. 606; 13 Id. 306.

†13 Wallace, 329.

[Advertisement.]

NAVAL KNIGHTS OF THE CIVIL WAR.

To perpetuate the memory of the achievements of the United States Navy during the Civil War, and to secure from Congress and from State Legislatures such legislation for their benefit as may, from time to time, be deemed proper, the officers of the Volunteer branch of the Navy have formed this Society. Ex-Officers and others friendly to the objects of this society are invited to transmit their names and post-office addresses to its Commander, Charles Cowley, 53 State Street, Boston, Mass.

"If risking health, performing severe duty, and rendering important services to the State, should entitle men to adequate compensation, the officers of the Navy are so entitled in a more eminent degree than any other set of men."—*Alexander S. Mackenzie, 1833.*

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Done. 4-0 / Lantern.